

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE APPELLATE PANEL OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. File No.: 1318928
Appellate Case No. 2016-002423

James A. Ashford, Employee, Claimant Respondent

v.

Prysmian Power Cables & Systems, USA, Employer,
and Sentry Insurance Company, Carrier Appellants.

RECORD ON APPEAL

Nicolas L. Haigler, Esquire
Sowell Gray Robinson Stepp &
Laffitte, LLC
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400
Attorney for Appellants

David N. Truitt, Esquire
925 Calhoun Street
Columbia, SC 29201
(803) 814-1556
Attorney for Respondent

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REVISED
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO: 1318928

James A. Ashford, CLAIMANT

v.

Prysmian Power Cables, EMPLOYER

and

Sentry Insurance A Mutual Group, CARRIER

HEARING:

Held on June 23, 2015 in Columbia, South Carolina.

APPEARANCES:

The Claimant, James Ashford, was represented by David N. Truitt, Esq. of The Truitt Law Firm, LLC, 925 Calhoun Street, Columbia, SC 29201.

The Defendants, Prysmian Power Cables, Employer, and Sentry Insurance A Mutual Group, Carrier, were represented by, Nicholas Haigler, Esquire, of Sowell, Gray, Stepp & Lafitte, LLC, 1310 Gadsden Street, Columbia, South Carolina, 29211.

PURPOSE:

To determine the issues set forth on the Forms 21 of the Defendants and Forms 50 and 51 of the parties.

DECISION AND ORDER BY:

The Honorable R. Michael Campbell, II, Commissioner.

FILED:

May 4, 2016

MEDICAL EVIDENCE/RATINGS- APA SUBMISSIONS

Pursuant to the South Carolina Administrative Procedures Act, South Carolina Code §1-23-320 *et seq.* and Regulation 67-612, the parties submitted the following items without objection as evidence in support of their cases.

DEFENDANTS' APA SUBMISSIONS

- APA #1 Reports of Joseph Moran, M.D. of Palmetto Podiatry consisting of 50 pages.
- APA #2 Reports of Subhash Patel, M.D. of Southern Orthopaedics consisting of 3 pages.
- APA #3 Reports of David Fulton, M.D. of Moore Orthopaedics consisting of 29 pages.
- APA #4 Reports of Deanna Constable, M.D. of Palmetto Orthopaedics consisting of 15
pages.
- APA #5 Reports of Lexington Medical Center Occupational Health consisting of 8 pages.
- APA #6 Deposition of Todd Hanson, Post Trauma Resources, July 27, 2015.

CLAIMANT'S APA SUBMISSIONS

- APA #1 Report of Usama Gabr, M.D. of Columbia Clinic, Pain & Spine Institute
consisting of 4 pages.

CLAIMANT'S SUPPLEMENTAL APA's:

- APA #2 Report of Timothy Zgleszewski, M.D. of Palmetto Spine Sports Medicine
consisting of 7 pages.

Defendants objected to Claimant's second supplemental APA's as being untimely.

CLAIMANT'S SECOND SUPPLEMENTAL APA's:

- APA #3 Report of Todd Hanson, licensed therapist of Post Trauma Resources consisting
of 7 pages.

STIPULATIONS

At the call of the case, the parties stipulated that the South Carolina Workers' Compensation had jurisdiction in this case and that venue was proper in Richland County. The purpose of the hearing is to decide issues that were raised in Defendants' Form 21. Notice was timely and properly served upon all parties of interest. Also, both parties stipulated that Claimant's average weekly was \$1,582.73 with a corresponding compensation rate of \$743.72. Without objection, and with the exception of any self-serving statements or unstipulated medical reports, the Commission's file was made part of this record.

STATEMENT OF THE CASE

Claimant seeks benefits under the South Carolina Workers' Compensation Act based upon an accidental injury occurring on October 30, 2013, while in the employment of the Defendant. Claimant suffered an admitted injury by accident when his right hand and wrist were crushed and stuck in a machine.

The issues in this case are a determination of whether Claimant has reached maximum medical improvement, the extent of permanent disability, if any, and if not at maximum medical improvement, Claimant's entitlement to additional medical care and treatment prior to reaching maximum medical improvement. Claimant testified at the hearing, and medical records were submitted under the Administrative Procedures Act as evidence and made part of the Commission record.

This matter is properly before the undersigned Commissioner to resolve the issues that were raised in Defendant's Form 21 as it pertains to Claimant's admitted right wrist injury. Defendants seek to stop temporary total disability (TTD) benefits and medical care and pay a

permanent partial disability award to Claimant under the South Carolina Workers' Compensation Act based upon an admitted accidental injury to the right wrist that occurred on October 30, 2013, while in the employment of Employer/Defendants. Claimant currently has a pending Form 50 hearing request alleging additional injuries to his psyche, right lower extremity, and right side and permanent and total disability requiring mandatory mediation which are not timely for the purposes of this hearing and are not properly before me. This case was heard by the undersigned Commissioner on June 23, 2015, at which time the parties and/or their representatives appeared and evidence was received.

Defendants alleged that Claimant reached maximum medical improvement pursuant to §42-9-260 on February 13, 2015, and is entitled to permanent partial disability pursuant to §42-9-30. Further, Defendants requested credit for overpayment from the date of maximum medical improvement until the determination of the commissioner's decision. Claimant sustained an admitted injury to his right wrist injury on October 30, 2013, and treated with Lexington Medical Center-Occupational Health, Dr. Deanna Constable of Palmetto Orthopaedic Clinic, and Dr. David Fulton of Moore Orthopaedics and received a 5% impairment rating to the right upper extremity on February 13, 2015, from Dr. Fulton. Additionally, Defendants denied injury to the right lower extremity, right side, and psychological. Defendants objected to the admission of Claimant's second supplemental APA #3 of Todd Hanson of Post Trauma Resources as not being timely. The undersigned Commissioner allowed Claimant's APA #3 into evidence and kept the record open for Defendants to take and submit the deposition of Todd Hanson. Defendants took the deposition of Todd Hanson on July 27, 2015, and submitted it into evidence on August 6, 2015.

Claimant alleged that he is not at maximum medical improvement and needs additional medical care. Claimant was still having problems with his right upper extremity on his last visit with the authorized treating physician, Dr. Fulton; as a result, Claimant asked Dr. Fulton for a referral for a second opinion. Inexplicably, Dr. Fulton refused to recommend a second opinion and released Claimant with no work restrictions or future medical care. Consequently, Claimant had to seek medical care on his own with Dr. Subhash Patel of Southeastern Orthopaedic and Sports Medicine and Dr. Usama Gabr of Columbia Clinic, Spine and Pain Institute. Both Dr. Patel and Dr. Gabr recommended that an EMG/NCS be performed on Claimant's right upper extremity. Defendants received the recommendation from Dr. Patel for an EMG/NCS and authorized the EMG/NCS performed by Dr Timothy Zgleszewski of Palmetto Spine Sports Medicine on June 3, 2015. The EMG/NCS was abnormal, corroborating Claimant's complaints to Dr. Fulton. There are multiple possible reasons for the abnormal test. However, instead of following through with authorizing another orthopaedist besides Dr. Fulton to review and opine what the positive EMG/NCS means in relation to Claimant's admitted right wrist injury, Defendants chose to proceed with a Form 21 hearing. Claimant respectfully requested that the undersigned Commissioner authorize additional medical care with another hand specialist so that hand specialist can review the abnormal EMG/NCS and treat Claimant appropriately. Claimant had no problems with his right upper extremity prior to this admitted work-related injury in which he suffered a crush injury, right dorsal wound, right ulnar styloid fracture, right triangular fibrocartilage complex tear, and carpal tunnel syndrome. Claimant contended that he is not at maximum medical improvement as Dr. Patel and Dr. Gabr both recommended the EMG/NCS be performed and neither physician found Claimant at maximum medical improvement. Claimant

also contended that the 5% impairment rating to the right upper extremity by Dr. David Fulton is premature as Claimant is not at maximum medical improvement. Claimant contended that the burden of proof is on Defendants at a Form 21 hearing and that Defendants failed to meet that burden of proof as Dr. Patel, Dr. Gabr, and the June 3, 2015, EMG/NCS overwhelmingly contradicted Dr. Fulton's opinion.

In the alternative, if Claimant is found to be at maximum medical improvement (MMI), Claimant asserted that he is permanently and totally disabled under the Act pursuant to S.C. Code Ann. §42-9-10 as a result of the totality of his combined injuries, and that he is entitled to any and all reasonable medical care which stems from the accident and resulting injuries in this claim. In addition, Claimant alleged that the Form 21 hearing is premature as mandatory mediation is required when Claimant alleges permanent and total disability in his Form 50 request for a hearing pursuant to SC Code of Regulation 67-1802.

After having carefully reviewed the APA expert medical reports and expert opinions submitted by the parties; the trial exhibits of the parties, and other evidence, including, but not limited to the pleadings of the parties in this matter as well as the trial testimony of Claimant, the undersigned has reached the following findings of fact and conclusions of law in this matter.

FINDINGS OF FACT

1. All parties are bound by and subject to the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with James Ashford, as Employee, and Prysmian Power Cables, as Employer, and Sentry Insurance Mutual Group, as Carrier.

2. Jurisdiction and venue for the hearing are proper and agreed upon by the parties in Columbia, South Carolina.

3. Notice of the hearing was set on Defendants' Form 21 as it pertained to Claimant's right wrist injury.

4. Claimant has a pending Form 50 that alleged injuries to his psyche, right lower extremity and right side. Although evidence was presented at the hearing regarding these alleged injuries, I find they are not timely for the purposes of this hearing and are not properly before me.

5. Claimant sustained an admitted injury to his right wrist arising out of and in the course and scope of his employment on October 30, 2013, when his right wrist and hand were crushed and caught in a machine for approximately five to eight minutes. Claimant suffered injuries to his right upper extremity including, but not limited to, a crush injury, right dorsal wound, right ulnar styloid fracture, right triangular fibrocartilage complex tear, and carpal tunnel syndrome.

6. Claimant had no prior problems with his right upper extremity prior to the admitted work-related accident on October 30, 2013.

7. Claimant testified that he is 59 years old (Hearing Transcript page 17, Line 16) and that he has worked for the Employer for 26 years (Transcript page 22, Lines 23-25). Claimant testified that his hand got caught in the machine and was wedged between the reel and shaft. (Transcript page 18, Lines 17-18). Claimant further testified that his hand was stuck in the machine for 5 to 8 minutes before the service operator came and got him out. (Transcript page 18, Lines 19-23).

Claimant testified that immediately following the injury, he had numbness in his ring finger, little finger, and wrist with sharp pains going down into the elbow (Transcript page 19,

Lines 3-6). Claimant testified that he continues to have the same symptoms today with no change in his symptoms (Transcript page 19, Lines 7-12). Claimant testified that despite the surgery performed by Dr. Fulton, he still continues to experience pain, is unable to sleep at night, and wakes up 3 to 4 nights a week even after taking sleep and pain medications (Transcript page 19, Lines 15-18). Claimant testified that he discussed his symptoms with Dr. David Fulton and asked Dr. Fulton for a second opinion that was not given to him (Transcript page 19, Lines 22-25 and page 20, Lines 1-5). Claimant testified that he went to Dr. Subhash Patel and Dr. Usama Gabr who both requested an EMG/Nerve Conduction Study (Transcript page 20, Lines 6-16). Claimant testified that he had the EMG/Nerve Conduction Study, but the results have not been interpreted by a physician (Transcript page 20, Lines 17-24). Claimant testified that he would like to have a hand specialist besides Dr. Fulton review the EMG/NCS to find out why the results are abnormal. (Transcript page 20, Lines 1-12; Transcript page 55, Lines 19-23).

Claimant testified that prior to this work-related injury, he did not have any problems with his right wrist or hand. Claimant further testified that since his work related injury, he has had continuous problems with his right hand and wrist. (Transcript page 23, Lines 4-25; Transcript page 24, Line 1).

Claimant testified that Defendants (worker's compensation carrier) authorized and paid for the June 3, 2015, EMG/Nerve Conduction study but have not authorized a physician to treat Claimant and review the abnormal EMG/NCS. (Transcript page 25, Lines 9-22).

8. On October 30, 2013, Claimant was evaluated by Donna Padgett, NP, who noted that he was injured at work when his right hand was caught in a machine and compressed. He was able to extract his hand, but was having significant pain, aching pain over his wrist and hand

with swelling. He ranked his pain level as 8-9/10 and described it as a deep aching pain, with tingling in his hands, particularly the little finger and some in ring finger. He denied ever having any problems with his hands or wrists. He indicated that he was diabetic and took medicine for high blood pressure (Defendants' APA 5, page 104).

9. On December 12, 2013, Dr. Deanna Constable of Palmetto Orthopaedics noted right upper extremity injury secondary to getting caught in a reel after he thought the reel was stopped, pulling his wrist and arm up into the spool and was unable to remove it for several minutes. She further noted that he denied any previous injury to the hand but complains of discomfort, swelling and cool sensations of the hand, dysesthesias. Radiographs of the right hand showed a noted ulnar styloid fracture. (Defendants' APA 4, page 95). Diagnosis was right hand crush injury, right healed dorsal wound and right ulnar styloid fracture (Defendants' APA 4, page 96).

10. On December 26, 2013, an MRI of right wrist indicated non-united fracture of the ulnar styloid process noted with a tear of the ulnar insertion of the triangular fibrocartilage with mild reactive marrow edema of the distal ulnar head. Findings suggestive of a distal insertional tear of the flexor carpi ulnaris tendon distal to its insertion upon the anterior pisiform carpal bone (Defendants' APA 4, page 93).

11. On January 16, 2014, Dr. Deanna Constable noted that the MRI showed a nonunion of the ulnar styloid fracture and a triangular fibrocartilage complex (TFCC) tear. Diagnosis was 3 months status post crush injury, healed right dorsal wound, right ulnar styloid fracture, and right triangular fibrocartilage complex tear (Defendants' APA 4, page 91).

12. On February 20, 2014, Dr. Deanna Constable noted that he still has a moderate amount of pain and weakness with complaints of dysesthesias along the ulnar nerve distribution. She noted he complained of moderate hand weakness. Diagnosis was moderate amount of irritability, persistent ulnar nerve dysesthesias with hand weakness and recommended an EMG/Nerve Conduction Study (Defendants' APA 4, page 89).

13. On March 10, 2014, Dr. Devin Troyer performed an EMG/Nerve Conduction Study and made the following findings- 1. abnormal electrical study; 2. slowing of the median motor and sensory nerves at the right wrist segment most consistent with carpal tunnel syndrome; 3. no evidence of other nerve impingement; 4. additional evidence of mild diffuse slowing most consistent with a peripheral polyneuropathy; 5. no evidence of radiculopathy on needle exam of the tested right upper extremity (Defendants' APA 4, page 88).

14. On March 21, 2014, Dr. Deanna Constable noted a moderate amount of ulnar nerve dysesthesias and weakness in his hand. She further opined that nerve studies did not show any nerve involvement, although clinically, his hand was consistent with some ulnar nerve dysesthesias. Dr. Constable referred Claimant to Dr. Fulton. (Defendants' APA 4, page 83).

15. On July 1, 2014, Dr. Fulton saw Claimant for ongoing complaints of pain and numbness in the right hand and wrist as well as sharp pain over the ulnar aspect of the wrist. Claimant had a positive median nerve compression test of the right wrist. Claimant had pain over the TFCC and subtle swelling of the ulnar styloid. Dr. Fulton diagnosed Claimant with carpal tunnel syndrome and triangular fibrocartilage complex injury with ulnar styloid nonunion. Dr. Fulton recommended a right carpal tunnel release as well as excision of the ulnar styloid fragment and possible TFCC repair. (Defendants' APA 3, page 77).

16. On November 3, 2014, Dr. David Fulton performed a right carpal tunnel release, right wrist ulnar styloid excision, and repair of TFCC of right wrist (Defendants' APA 3, page 71).

17. On November 14, 2014, Jessamyn Bartley, PA, at Moore Orthopaedics, noted swelling and numbness and tingling in the ulnar nerve distribution, mainly into the small finger (Defendants' APA 3, page 68).

18. On January 16, 2015, Jessamyn Bartley, PA, at Moore Orthopaedics noted Claimant was previously written for light duty, but no light duty available, so he remained out of work. Ms. Bartley noted periods of numbness and tingling in the ring finger and small finger, which happens to be present a large majority of the time. On exam, she noted swelling ulnarly with difficulty making a composite fist, poor flexion in the ring and small finger, stiff wrist motion, and no full dorsal and palmar flexion. We will continue to monitor the numbness and tingling in the ulnar nerve distribution. Ms. Bartley thinks it is likely from the sensory branch down at the level of the surgery and caused by neuropraxia (Defendants' APA 3, pages 59-60).

19. On February 13, 2015, Dr. David Fulton, authorized treating physician, opined that Claimant was making slower progress than expected based on this time from injury, time from surgery and nature of the procedure. Dr. Fulton noted that Claimant requested a second opinion and that he had a problem with his hand with numbness and tingling in his ring and small finger. In addition, Dr. Fulton stated that this complaint has been persistent since Dr. Fulton met him, but Claimant did have a previous nerve conduction study that showed possible underlying neuropathy. Dr. Fulton placed Claimant at MMI, assigned a 5% medical impairment to the right upper extremity, which equated to 1% from the carpal tunnel release and 4% from the

TFCC repair, and released him without work restrictions or future medical care. (Defendants' APA 3, pages. 54-55).

20. On March 9, 2015, Claimant went to Dr. Subhash Patel of Southeastern Orthopaedic and Sports Medicine for a second opinion. Claimant's chief complaint was painful tingling and numbness with weakness of the right hand. Claimant sustained a crush injury at work in 2013. He underwent a carpal tunnel release along with excision of the spur from the dorsal aspect of the right hand and wrist. Dr. Patel noted that right hand has a healed scar from release of carpal tunnel syndrome, hypesthesia in the median nerve distribution compared to the left hand, and even more hypesthesia in the little and ring finger on the right hand. Motion of the wrist was very minimally restricted with parasthesia on palpation of the ulnar nerve and cubital tunnel. Claimant was diagnosed with cubital tunnel syndrome of the right elbow and persistent paresthesia with numbness following carpal tunnel release with pain. Dr. Patel recommended an EMG/Nerve Conduction Study. (Defendants' APA 2, page 51)

21. On March 18, 2015, in an IME for Claimant, Dr. Usama Gabr of Columbia Clinic, Spine and Pain Institute, opined Claimant presented with symptoms consistent with symptomatic tendonopathy of the wrist and recommended conservative therapy and then DeQuervains injections. In addition, Dr. Gabr recommended a EMG/NCS for carpal tunnel syndrome symptoms. Claimant has right hand weakness, right hand numbness, and tingling since October 30, 2013, as a result of a work injury when he got his hand caught in a machine at work. Claimant has a pertinent history of diabetes and hypertension which are well controlled. Claimant was having intermittent numbness and tingling of the fingers, especially the small and ring fingers on the right, worse with bending the wrist and certain positions. Claimant has

occasional sleep interruptions secondary to pain, numbness and tingling. His assessment was ulnar neuropathy due to carpal tunnel syndrome. Carpal tunnel symptoms are worse at night and affecting hand function on many occasions; as a result, Dr. Gabr recommended an EMG/NCS of the upper limbs in order to evaluate the severity and the chronicity of the complaints. Based on the EMG/NCS results, further interventions or surgical release will be considered. Dr. Usama Gabr recommended DeQuervains injection, CTS injections, and an EMG/Nerve Conduction Study (Claimant's APA 1, pages 106-109).

22. On June 3, 2015, Dr. Timothy Zgleszewski of Palmetto Spine and Sports Medicine performed an EMG/NCS authorized by Defendants based on the recommendation of Dr. Patel. Prior to the EMG/NCS, Dr. Zgleszewski noted that Claimant's pain is secondary to a work accident when his hand was crushed by a machine. Claimant complains of right hand numbness, pain in the wrist extending into all five fingers with numbing and tingling sensations with average pain of 5/10 and during flare ups 8/10. Claimant reports nighttime paresthesias. Claimant reports dropping objects. Examination revealed positive Tinel's sign on the right elbow and wrist (Claimant's APA 2, page 110-111). Claimant has continuous numbness of the right hand post crush injury. Dr. Zgleszewski performed the EMG/Nerve Conduction Study and made the following findings- 1. an abnormal electrodiagnostic examination; 2. possible right focal median neuropathy at the wrist (sensory/motor); 3. possible right ulnar neuropathy at the elbow; 4. possible Diabetes Mellitus neuropathy; 5. no evidence of cervical radiculopathy, brachial plexopathy, peripheral polyneuropathy or myopathic process. Dr. Zgleszewski further concluded that Claimant requires an EMG/NCS to the left upper extremity and one lower extremity for definite diagnosis. (Claimant's APA 2, page 112).

23. Defendants have not authorized a hand specialty physician to treat Claimant after the abnormal right upper extremity EMG/NCS performed by Dr. Timothy Zgleszewski on June 3, 2015.

24. Claimant is not at MMI for his admitted right upper extremity injury.

25. Claimant is entitled to all causally related future medical treatment, as recommended by Dr. Gabr, by a physician with a specialty to the hand of Defendants' choosing.

26. Defendants shall not choose a physician that has previously been authorized to treat Claimant nor shall Defendants choose a physician who is within the same practice of a physician who has previously been authorized to treat Claimant.

27. Defendants are not entitled to stop temporary total disability benefits (TTD) at this time.

CONCLUSIONS OF LAW

Accordingly, as provided in the South Carolina Code of Law, 1976, as amended, §42-17-40, it is the determination of this Commissioner that:

1. Under § 42-3-20 and § 42-3-180, this Commissioner has jurisdiction over the parties to hear the issues in dispute.

2. Under § 42-1-130, Claimant, James Ashford, is a covered employee.

3. Under § 42-1-140, Prysmian Power Cables is a covered employer.

4. Under § 42-1-150, there was an employer/employee relationship between the parties on the date of accident.

5. Under § 42-17-20, venue in Columbia, South Carolina was proper and agreed upon by the parties.

6. Under § 1-23-320 (b) and Regulation 67-607, notice of the hearing was timely and properly served upon all of the parties of interest.

7. Under § 42-15-20, the Claimant gave timely notice of his accident to his employer.

8. Under § 42-15-40, the claim for benefits was timely filed under the Workers' Compensation Act with the South Carolina Workers' Compensation Commission.

9. Under § 42-1-40, the Claimant's average weekly wage is \$1,582.73 with a corresponding compensation rate of \$743.72.

10. Under § 42-1-160, the Claimant sustained a compensable injury to his right wrist.

11. Under §42-15-60, and per the evidence presented, the Claimant has not attained maximum medical improvement for his injury, and Claimant is entitled to all causally related future medical treatment, as recommended by Dr. Gabr, by a physician with a specialty to the hand of Defendants' choosing.

ORDER

IT IS THEREFORE ORDERED that Claimant is not at MMI for his admitted right wrist injury.

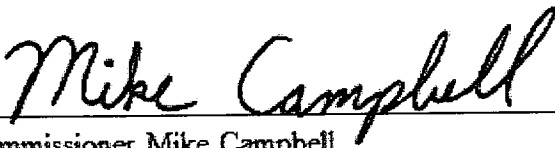
IT IS THEREFORE ORDERED that Claimant is entitled to all causally related future medical treatment, as recommended by Dr. Gabr, by a physician with a specialty to the hand of Defendants' choosing.

IT IS THEREFORE ORDERED that Defendants shall not choose a physician that has previously been authorized to treat Claimant nor shall Defendants choose a physician who is within the same practice of a physician who has previously been authorized to treat Claimant.

IT IS THEREFORE ORDERED that Defendants are not entitled to stop temporary total disability benefits at this time and shall continue paying temporary total disability benefits.

AND IT IS SO ORDERED.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION



Commissioner Mike Campbell

May 4, 2016

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid, in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

May 4, 2016

By: Barbara Cheeseboro, Administrative Assistant to Commissioner Campbell

**APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO.: 1318928**

JAMES A. ASHFORD, EMPLOYEE CLAIMANT/RESPONDENT

VS.

PRYSMIAN POWER CABLES & SYSTEMS, USA, EMPLOYER,

AND

SENTRY INSURANCE COMPANY, CARRIER DEFENDANTS/APPELLANTS.

Appellate Panel Review Hearing
held in Columbia, South Carolina,
on August 15, 2016, per notices
timely and properly served upon
all parties of interest.

Appellate Panel Decision and Order

filed, November 1, 2016

APPEARANCES: CLAIMANT/RESPONDENT represented by David N. Truitt, Esquire, of
Columbia, South Carolina; and

DEFENDANTS/APPELLANTS represented by Nicolas L. Haigler, Esquire, of
Columbia, South Carolina.

STATEMENT OF THE CASE

This is an appeal by Prysmian Power Cables & Systems, USA, and Sentry Insurance Company ("Appellants" or "Defendants") from the Decision and Order of Commissioner R. Michael Campbell, II, filed on May 4, 2016.

By way of background, this claim was before the South Carolina Workers' Compensation Commission pursuant to the Form 21 filed by the Defendants on April 30, 2015. It is the position of the Defendants that the Claimant reached maximum medical improvement (MMI) with regard to his right wrist on February 13, 2015, per the corresponding report of Dr. David B. Fulton. As such, temporary total disability (TTD) benefits should be terminated pursuant to Section 42-9-260 of the Act. The Defendants also requested credit for all TTD benefits paid after the date of MMI, and requested a determination as to the extent of permanent partial disability (PPD) sustained to the right arm under Section 42-9-30. The Defendants further requested a determination as to whether the Claimant is entitled to further medical treatment pursuant to Section 42-15-60 of the Act.

Claimant alleged that he is not at maximum medical improvement and needs additional medical care. Claimant was still having problems with his right upper extremity on his last visit with the authorized treating physician, Dr. Fulton; as a result, Claimant asked Dr. Fulton for a referral for a second opinion. Inexplicably, Dr. Fulton refused to recommend a second opinion and released Claimant with no work restrictions or future medical care. Consequently, Claimant had to seek medical care on his own with Dr. Subhash Patel of Southeastern Orthopaedic and Sports Medicine and Dr. Usama Gabr of Columbia Clinic, Spine and Pain Institute. Both Dr. Patel and Dr. Gabr recommended that an EMG/NCS be performed on Claimant's right upper extremity. Defendants received the recommendation from Dr. Patel for an EMG/NCS and authorized the EMG/NCS performed by Dr Timothy Zgleszewski of Palmetto Spine Sports Medicine on June 3, 2015. The EMG/NCS was abnormal, corroborating Claimant's complaints to Dr. Fulton. There are multiple

possible reasons for the abnormal test. However, instead of following through with authorizing another orthopaedist besides Dr. Fulton to review and opine what the positive EMG/NCS means in relation to Claimant's admitted right wrist injury, Defendants chose to proceed with a Form 21 hearing. Claimant respectfully requested that the undersigned Commissioner authorize additional medical care with another hand specialist so that hand specialist can review the abnormal EMG/NCS and treat Claimant appropriately. Claimant had no problems with his right upper extremity prior to this admitted work-related injury in which he suffered a crush injury, right dorsal wound, right ulnar styloid fracture, right triangular fibrocartilage complex tear, and carpal tunnel syndrome. Claimant contended that he is not at maximum medical improvement as Dr. Patel and Dr. Gabr both recommended the EMG/NCS be performed and neither physician found Claimant at maximum medical improvement. Claimant also contended that the 5% impairment rating to the right upper extremity by Dr. David Fulton is premature as Claimant is not at maximum medical improvement. Claimant contended that the burden of proof is on Defendants at a Form 21 hearing and that Defendants failed to meet that burden of proof as Dr. Patel, Dr. Gabr, and the June 3, 2015, EMG/NCS overwhelmingly contradicted Dr. Fulton's opinion.

In the alternative, if Claimant is found to be at maximum medical improvement (MMI), Claimant asserted that he is permanently and totally disabled under the Act pursuant to S.C. Code Ann. §42-9-10 as a result of the totality of his combined injuries, and that he is entitled to any and all reasonable medical care which stems from the accident and resulting injuries in this claim. In addition, Claimant alleged that the Form 21 hearing is premature as mandatory mediation is required when Claimant alleges permanent and total disability in his Form 50 request for a hearing pursuant to SC Code of Regulation 67-1802.

The Hearing in this matter was held on June 23, 2015, in Columbia, South Carolina, before Commissioner R. Michael Campbell, II ("Hearing Commissioner"). Prior to the call of the case, the

Defendants objected to the admissibility of the reports and opinions of Todd Hanson, LMFT, submitted by the Claimant in support of the compensability of the alleged psychological condition. The Hearing Commissioner overruled the objection, but agreed to leave the record open to allow the Defendants an opportunity to depose Todd Hanson. That deposition occurred on July 27, 2015, and was subsequently submitted to the Hearing Commissioner for consideration.

By way of Decision and Order filed on May 4, 2016, the Hearing Commissioner made the following findings of fact:

1. All parties are bound by and subject to the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with James Ashford, as Employee, and Prysmian Power Cables, as Employer, and Sentry Insurance Mutual Group, as Carrier.
2. Jurisdiction and venue for the hearing are proper and agreed upon by the parties in Columbia, South Carolina.
3. Notice of the hearing was set on Defendants' Form 21 as it pertained to Claimant's right wrist injury.
4. Claimant has a pending Form 50 that alleged injuries to his psyche, right lower extremity and right side which are not timely for the purposes of this hearing and are not properly before me.
5. Claimant sustained an admitted injury to his right wrist arising out of and in the course and scope of his employment on October 30, 2013, when his right wrist and hand were crushed and caught in a machine for approximately five to eight minutes. Claimant suffered injuries to his right upper extremity including, but not limited to, a crush injury, right dorsal wound, right ulnar styloid fracture, right triangular fibrocartilage complex tear, and carpal tunnel syndrome.
6. Claimant had no prior problems with his right upper extremity prior to the admitted work-related accident on October 30, 2013.
7. Claimant testified that he is 59 years old (Hearing Transcript page 17, Line 16) and that he has worked for the Employer for 26 years (Transcript page 22, Lines 23-25). Claimant testified that his hand got caught in the machine and was wedged between the reel and shaft. (Transcript page 18, Lines 17-18). Claimant further testified that his hand was stuck in the machine for 5 to 8 minutes before the service operator came and got him out. (Transcript page 18, Lines 19-23).

Claimant testified that immediately following the injury, he had numbness in his ring finger, little finger, and wrist with sharp pains going down into the elbow (Transcript page 19, Lines

3-6). Claimant testified that he continues to have the same symptoms today with no change in his symptoms (Transcript page 19, Lines 7-12). Claimant testified that despite the surgery performed by Dr. Fulton, he still continues to experience pain, is unable to sleep at night, and wakes up 3 to 4 nights a week even after taking sleep and pain medications (Transcript page 19, Lines 15-18). Claimant testified that he discussed his symptoms with Dr. David Fulton and asked Dr. Fulton for a second opinion that was not given to him (Transcript page 19, Lines 22-25 and page 20, Lines 1-5). Claimant testified that he went to Dr. Subhash Patel and Dr. Usama Gabr who both requested an EMG/Nerve Conduction Study (Transcript page 20, Lines 6-16). Claimant testified that he had the EMG/Nerve Conduction Study, but the results have not been interpreted by a physician (Transcript page 20, Lines 17-24). Claimant testified that he would like to have a hand specialist besides Dr. Fulton review the EMG/NCS to find out why the results are abnormal. (Transcript page 20, Lines 1-12; Transcript page 55, Lines 19-23).

Claimant testified that prior to this work-related injury, he did not have any problems with his right wrist or hand. Claimant further testified that since his work related injury, he has had continuous problems with his right hand and wrist. (Transcript page 23, Lines 4-25; Transcript page 24, Line 1).

Claimant testified that Defendants (worker's compensation carrier) authorized and paid for the June 3, 2015, EMG/Nerve Conduction study but have not authorized a physician to treat Claimant and review the abnormal EMG/NCS. (Transcript page 25, Lines 9-22).

8. On October 30, 2013, Claimant was evaluated by Donna Padgett, NP, who noted that he was injured at work when his right hand was caught in a machine and compressed. He was able to extract his hand, but was having significant pain, aching pain over his wrist and hand with swelling. He ranked his pain level as 8-9/10 and described it as a deep aching pain, with tingling in his hands, particularly the little finger and some in ring finger. He denied ever having any problems with his hands or wrists. He indicated that he was diabetic and took medicine for high blood pressure (Defendants' APA 5, page 104).
9. On December 12, 2013, Dr. Deanna Constable of Palmetto Orthopaedics noted right upper extremity injury secondary to getting caught in a reel after he thought the reel was stopped, pulling his wrist and arm up into the spool and was unable to remove it for several minutes. She further noted that he denied any previous injury to the hand but complains of discomfort, swelling and cool sensations of the hand, dysesthesias. Radiographs of the right hand showed a noted ulnar styloid fracture. (Defendants' APA 4, page 95). Diagnosis was right hand crush injury, right healed dorsal wound and right ulnar styloid fracture (Defendants' APA 4, page 96).
10. On December 26, 2013, an MRI of right wrist indicated non-united fracture of the ulnar styloid process noted with a tear of the ulnar insertion of the triangular fibrocartilage with mild reactive marrow edema of the distal ulnar head. Findings suggestive of a distal insertional tear of the flexor carpi ulnaris tendon distal to its insertion upon the anterior pisiform carpal bone (Defendants' APA 4, page 93).
11. On January 16, 2014, Dr. Deanna Constable noted that the MRI showed a nonunion of the ulnar styloid fracture and a triangular fibrocartilage complex (TFCC) tear. Diagnosis was 3

months status post crush injury, healed right dorsal wound, right ulnar styloid fracture, and right triangular fibrocartilage complex tear (Defendants' APA 4, page 91).

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13. On March 10, 2014, Dr. Devin Troyer performed an EMG/Nerve Conduction Study and made the following findings- 1. abnormal electrical study; 2. slowing of the median motor and sensory nerves at the right wrist segment most consistent with carpal tunnel syndrome; 3. no evidence of other nerve impingement; 4. additional evidence of mild diffuse slowing most consistent with a peripheral polyneuropathy; 5. no evidence of radiculopathy on needle exam of the tested right upper extremity (Defendants' APA 4, page 88).
14. On March 21, 2014, Dr. Deanna Constable noted a moderate amount of ulnar nerve dysesthesias and weakness in his hand. She further opined that nerve studies did not show any nerve involvement, although clinically, his hand was consistent with some ulnar nerve dysesthesias. Dr. Constable referred Claimant to Dr. Fulton. (Defendants' APA 4, page 83).
15. On July 1, 2014, Dr. Fulton saw Claimant for ongoing complaints of pain and numbness in the right hand and wrist as well as sharp pain over the ulnar aspect of the wrist. Claimant had a positive median nerve compression test of the right wrist. Claimant had pain over the TFCC and subtle swelling of the ulnar styloid. Dr. Fulton diagnosed Claimant with carpal tunnel syndrome and triangular fibrocartilage complex injury with ulnar styloid nonunion. Dr. Fulton recommended a right carpal tunnel release as well as excision of the ulnar styloid fragment and possible TFCC repair. (Defendants' APA 3, page 77).
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19. On February 13, 2015, Dr. David Fulton, authorized treating physician, opined that Claimant was making slower progress than expected based on this time from injury, time from surgery and nature of the procedure. Dr. Fulton noted that Claimant requested a second opinion and that he had a problem with his hand with numbness and tingling in his ring and small finger. In addition, Dr. Fulton stated that this complaint has been persistent since Dr. Fulton met him, but Claimant did have a previous nerve conduction study that showed possible underlying neuropathy. Dr. Fulton placed Claimant at MMI, assigned a 5% medical impairment to the right upper extremity, which equated to 1% from the carpal tunnel release and 4% from the TFCC repair, and released him without work restrictions or future medical care. (Defendants' APA 3, pages. 54-55).
20. On March 9, 2015, Claimant went to Dr. Subhash Patel of Southeastern Orthopaedic and Sports Medicine for a second opinion. Claimant's chief complaint was painful tingling and numbness with weakness of the right hand. Claimant sustained a crush injury at work in 2013. He underwent a carpal tunnel release along with excision of the spur from the dorsal aspect of the right hand and wrist. Dr. Patel noted that right hand has a healed scar from release of carpal tunnel syndrome, hypesthesia in the median nerve distribution compared to the left hand, and even more hypesthesia in the little and ring finger on the right hand. Motion of the wrist was very minimally restricted with parasthesia on palpation of the ulnar nerve and cubital tunnel. Claimant was diagnosed with cubital tunnel syndrome of the right elbow and persistent paresthesia with numbness following carpal tunnel release with pain. Dr. Patel recommended an EMG/Nerve Conduction Study. (Defendants' APA 2, page 51)
21. On March 18, 2015, in an IME for Claimant, Dr. Usama Gabr of Columbia Clinic, Spine and Pain Institute, opined Claimant presented with symptoms consistent with symptomatic tendonopathy of the wrist and recommended conservative therapy and then DeQuervains injections. In addition, Dr. Gabr recommended a EMG/NCS for carpal tunnel syndrome symptoms. Claimant has right hand weakness, right hand numbness, and tingling since October 30, 2013, as a result of a work injury when he got his hand caught in a machine at work. Claimant has a pertinent history of diabetes and hypertension which are well controlled. Claimant was having intermittent numbness and tingling of the fingers, especially the small and ring fingers on the right, worse with bending the wrist and certain positions. Claimant has occasional sleep interruptions secondary to pain, numbness and tingling. His assessment was ulnar neuropathy due to carpal tunnel syndrome. Carpal tunnel symptoms are worse at night and affecting hand function on many occasions; as a result, Dr. Gabr recommended an EMG/NCS of the upper limbs in order to evaluate the severity and the chronicity of the complaints. Based on the EMG/NCS results, further interventions or surgical release will be considered. Dr. Usama Gabr recommended DeQuervains injection, CTS injections, and an EMG/Nerve Conduction Study (Claimant's APA 1, pages 106-109).
22. On June 3, 2015, Dr. Timothy Zgleszewski of Palmetto Spine and Sports Medicine performed an EMG/NCS authorized by Defendants based on the recommendation of Dr. Patel. Prior to the EMG/NCS, Dr. Zgleszewski noted that Claimant's pain is secondary to a work accident when his hand was crushed by a machine. Claimant complains of right hand numbness, pain in the wrist extending into all five fingers with numbing and tingling sensations with average pain of 5/10 and during flare ups 8/10. Claimant reports nighttime

paresthesias. Claimant reports dropping objects. Examination revealed positive Tinel's sign on the right elbow and wrist (Claimant's APA 2, page 110-111). Claimant has continuous numbness of the right hand post crush injury. Dr. Zgleszewski performed the EMG/Nerve Conduction Study and made the following findings- 1. an abnormal electrodiagnostic examination; 2. possible right focal median neuropathy at the wrist (sensory/motor); 3. possible right ulnar neuropathy at the elbow; 4. possible Diabetes Mellitus neuropathy; 5. no evidence of cervical radiculopathy, brachial plexopathy, peripheral polyneuropathy or myopathic process. Dr. Zgleszewski further concluded that Claimant requires an EMG/NCS to the left upper extremity and one lower extremity for definite diagnosis. (Claimant's APA 2, page 112).

23. Defendants have not authorized a hand specialty physician to treat Claimant after the abnormal right upper extremity EMG/NCS performed by Dr. Timothy Zgleszewski on June 3, 2015.
24. Claimant is not at MMI for his admitted right upper extremity injury.
25. Claimant is entitled to all causally related future medical treatment, as recommended by Dr. Gabr, by a physician with a specialty to the hand of Defendants' choosing.
26. Defendants shall not choose a physician that has previously been authorized to treat Claimant nor shall Defendants choose a physician who is within the same practice of a physician who has previously been authorized to treat Claimant.
27. Defendants are not entitled to stop temporary total disability benefits (TTD) at this time.

In addition, the Hearing Commissioner made the following conclusions of law:

1. Under § 42-3-20 and § 42-3-180, this Commissioner has jurisdiction over the parties to hear the issues in dispute.
2. Under § 42-1-130, Claimant, James Ashford, is a covered employee.
3. Under § 42-1-140, Prysmian Power Cables is a covered employer.
4. Under § 42-1-150, there was an employer/employee relationship between the parties on the date of accident.
5. Under § 42-17-20, venue in Columbia, South Carolina was proper and agreed upon by the parties.
6. Under § 1-23-320 (b) and Regulation 67-607, notice of the hearing was timely and properly served upon all of the parties of interest.
7. Under § 42-15-20, the Claimant gave timely notice of his accident to his employer.

8. Under § 42-15-40, the claim for benefits was timely filed under the Workers' Compensation Act with the South Carolina Workers' Compensation Commission.
9. Under § 42-1-40, the Claimant's average weekly wage is \$1,582.73 with a corresponding compensation rate of \$743.72.
10. Under § 42-1-160, the Claimant sustained a compensable injury to his right wrist.
11. Under §42-15-60, and per the evidence presented, the Claimant has not attained maximum medical improvement for his injury, and Claimant is entitled to all causally related future medical treatment, as recommended by Dr. Gabr, by a physician with a specialty to the hand of Defendants' choosing.

Within the statutory period, the defendants filed an Application for Review in the case setting forth their reasons, copies of which were furnished to all interested parties, prior to oral argument presented before the Full Commission Appellate Panel ("Appellate Panel") on August 15, 2016. All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the undersigned members of the Appellate Panel and has since been under study and consideration. Specifically, the defendants requested the Appellate Panel to reverse the Decision and Order of the Hearing Commissioner based upon the following grounds:

1. Did the Hearing Commissioner err in his Finding of Fact #4, wherein he found as a fact that "although evidence was presented at the hearing regarding [the alleged injuries to the psyche, right lower extremity and right side], I find they are not timely for the purposes of this hearing and are not properly before me"; said error being these issues were properly and timely before the Hearing Commissioner and, in fact, the Hearing Commissioner overruled the defendants' objection to excluding the claimant's expert psyche report and left the record open to allow the defendants to conduct discovery pertaining to these issues?
2. Did the Hearing Commissioner err in his Finding of Fact #4, wherein he found as a fact that "although evidence was presented at the hearing regarding [the alleged injuries to the psyche, right lower extremity and right side], I find they are not timely for the purposes of this hearing and are not properly before me"; said error being this finding constitutes a denial defendants' right to due process as to these issues?
3. Did the Hearing Commissioner err in his Finding of Fact #7, wherein he found as a "fact" portions the claimant's Hearing testimony; said error being this finding, specifically, the testimony of the claimant is inconsistent with the uncontroverted evidence in the record?

4. Did the Hearing Commissioner err in his Finding of Fact #7, wherein he found as a "fact" that the claimant requested Dr. Fulton provide a referral for a second opinion which Dr. Fulton denied; said error being this finding is based upon testimony by the claimant which is wholly contrary to uncontroverted report of Dr. Fulton?
5. Did the Hearing Commissioner err in his Finding of Fact #19, wherein he found as a "fact" an incomplete summary of Dr. Fulton's report from February 13, 2015; said error being summary fails to include and/or address Dr. Fulton's report that the claimant's symptoms may be causally-related to an underlying diabetic neuropathy, which the claimant refused to discuss with Dr. Fulton?
6. Did the Hearing Commissioner err in his Finding of Fact #22, wherein he found as a "fact" a summary of the results of the claimant's EMG/NCS performed by Dr. Zgleszewski on June 3, 2015; said error being the results of the EMG do not provide evidence of a condition causally-related to the admitted injury by accident, but instead provide numerous "possible" diagnosis and, as such, the claimant has not met his burden of proving, to a reasonable degree of medical certainty, that additional medical treatment for the causally-related condition will tend to lessen his period of disability?
7. Did the Hearing Commissioner err in his Finding of Fact #23 wherein he found "the defendants have not authorized a hand specialty physician to treat claimant after the abnormal right upper extremity EMG/NCS"; said error being the results of the EMG do not provide evidence of a condition causally-related to the admitted injury by accident, but instead provide numerous "possible" diagnosis and, as such, the claimant has not met his burden of proving, to a reasonable degree of medical certainty, that additional medical treatment for the causally-related condition will tend to lessen his period of disability?
8. Did the Hearing Commissioner err in his Finding of Fact #24 and Conclusion of Law #11 wherein he found as a fact and concluded as a matter of law that "claimant is not at MMI for his admitted right upper extremity injury"; said error being there is no evidence in the record indicating the claimant has not reached MMI and, as such, the only evidence in the record pertaining to MMI is from Dr. Fulton who opined the claimant reached MMI on February 13, 2015?
9. Did the Hearing Commissioner err in his Finding of Fact #24 and Conclusion of Law #11 wherein he found as a fact and concluded as a matter of law that "claimant is not at MMI for his admitted right upper extremity injury"; said error being the claimant failed to provide any evidence stated to a reasonable degree of medical certainty that additional medical treatment for his right upper extremity will tend to lessen his period of disability, as required by Section 42-15-60 of the Act?
10. Did the Hearing Commissioner err in his Finding of Fact #25 and Conclusion of Law #11, wherein he found as a fact and concluded as a matter of law that "claimant is entitled to all causally-related future medical treatment, as recommended by Dr. Gabr"; said error being the claimant failed to provide any evidence stated to a reasonable degree of medical certainty, including any evidence from Dr. Gabr, that additional medical treatment for his

right upper extremity will tend to lessen his period of disability, as required by Section 42-15-60 of the Act?

11. Did the Hearing Commissioner err in his Finding of Fact #25 and Conclusion of Law #11, wherein he found as a fact and concluded as a matter of law that "claimant is entitled to all causally-related future medical treatment, as recommended by Dr. Gabr"; said error being the very language of the finding violates the clear statutory requirement of Section 42-15-60 that defendants are only required to provide medical treatment, which to a reasonable degree of medical certainty, will tend to lessen the claimant's period of disability?
12. Did the Hearing Commissioner err in his Finding of Fact #27 wherein he found "defendants are not entitled to stop temporary total disability benefits"; said error being the only evidence in the record pertaining to MMI confirms the claimant has reached MMI and, therefore, the termination of TTD benefits is appropriate?
13. Did the Hearing Commissioner, by delaying the issuance of an Order for more than one year after the filing of the Form 21 by the defendants, and more than 10 months after the Hearing, violate defendants' right of due process?

After careful review in the instant case of all grounds raised, the evidence in the record, and oral arguments from both counsel, the Commission finds that, by unanimous vote, the Decision and Order of the Hearing Commissioner must be Affirmed in Part and Reversed in Part.

FINDINGS OF FACT

After careful review of the evidence presented by the parties, including the Hearing testimony of the claimant and the medical records and exhibits submitted through the APA, WE FIND AS A FACT THAT:

1. All parties are bound by and subject to the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with James Ashford, as Employee, and Pysmian Power Cables, as Employer, and Sentry Insurance Mutual Group, as Carrier.
2. Jurisdiction and venue for the hearing are proper and agreed upon by the parties in Columbia, South Carolina.
3. Notice of the hearing was set on Defendants' Form 21 as it pertained to Claimant's right wrist injury.
4. Claimant has a pending Form 50 that alleged injuries to his psyche, right lower extremity and right side which are not timely for the purposes of this hearing and are not properly before me.

5. Claimant sustained an admitted injury to his right wrist arising out of and in the course and scope of his employment on October 30, 2013, when his right wrist and hand were crushed and caught in a machine for approximately five to eight minutes. Claimant suffered injuries to his right upper extremity including, but not limited to, a crush injury, right dorsal wound, right ulnar styloid fracture, right triangular fibrocartilage complex tear, and carpal tunnel syndrome.
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25. Claimant is entitled to all causally related future medical treatment, as recommended by Dr. Gabr, by a physician with a specialty to the hand of Defendants' choosing.
26. Defendants shall not choose a physician that has previously been authorized to treat Claimant; nor shall Defendants choose a physician who is within the same practice of a physician who has previously been authorized to treat Claimant.

27. Claimant has been released to return to work without restrictions by Dr. Fulton and, moreover, neither Dr. Patel nor Dr. Gabr opined regarding the claimant's ability to work.
28. Defendants are entitled to stop temporary total disability benefits (TTD) as of May 4, 2015, as the claimant has been released to return to work without restrictions and employment has been offered.
29. Defendants are entitled to a credit for all TTD benefits paid from May 4, 2015, through the date of this Decision and Order; this credit shall be applied to any prospective indemnity benefits paid in the claim, including but not limited to TTD benefits and any determination of permanent disability.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, and as provided by the Code of Laws of South Carolina, § 42-17-40, it is the determination of the Commission that:

1. Under § 42-3-20 and § 42-3-180, this Commissioner has jurisdiction over the parties to hear the issues in dispute.
2. Under § 42-1-130, Claimant, James Ashford, is a covered employee.
3. Under § 42-1-140, Prysmian Power Cables is a covered employer.
4. Under § 42-1-150, there was an employer/employee relationship between the parties on the date of accident.
5. Under § 42-17-20, venue in Columbia, South Carolina was proper and agreed upon by the parties.
6. Under § 1-23-320 (b) and Regulation 67-607, notice of the hearing was timely and properly served upon all of the parties of interest.
7. Under § 42-15-20, the Claimant gave timely notice of his accident to his employer.
8. Under § 42-15-40, the claim for benefits was timely filed under the Workers' Compensation Act with the South Carolina Workers' Compensation Commission.
9. Under § 42-1-40, the Claimant's average weekly wage is \$1,582.73 with a corresponding compensation rate of \$743.72.
10. Under § 42-1-160, the Claimant sustained a compensable injury to his right wrist.
11. Under § 42-15-60, and per the evidence presented, the Claimant has not attained maximum medical improvement for his injury, and Claimant is entitled to all causally

related future medical treatment, as recommended by Dr. Gabr, by a physician with a specialty to the hand of Defendants' choosing.

12. Under §42-9-260 and Regulation 67-506, defendants are entitled to terminate TTD benefits as of May 4, 2015, and defendants are entitled to a credit against prospective indemnity for all TTD benefits paid from May 4, 2015, through the date this Order is filed.

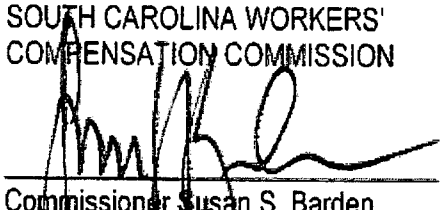
ORDER

IT IS, THEREFORE, ORDERED, that the Decision and Order of the Hearing Commissioner filed in the above-captioned matter on May 12, 2015, is hereby Reversed in part. Specifically, it is Ordered that the defendants are entitled to terminate TTD benefits as of May 4, 2015, as the claimant has been released to return to work without restrictions. Moreover, the defendants are entitled to a credit for TTD benefits paid from May 4, 2015, through the filing date of this Order. Nothing in this Order shall prohibit an award of prospective temporary benefits.

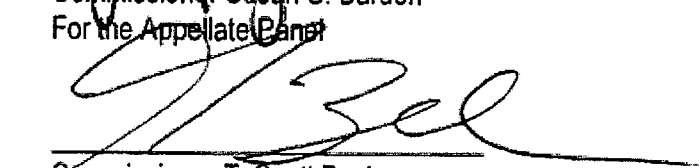
IT IS FURTHER ORDERED that, with the exception of the correction of a minor and non-substantive clerical errors, the remainder of the Decision and Order of the Hearing Commissioner is Affirmed in its entirety.

AND IT IS SO ORDERED.

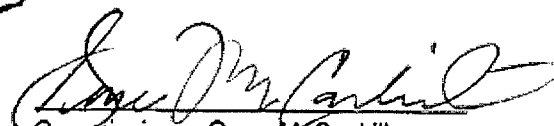
SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION



Commissioner Susan S. Barden
For the Appellate Panel



Commissioner T. Scott Beck



Commissioner Gene McCaskill

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Eugenia Hollmon on November 1, 2016



Claimant's Name: James Ashford SSN: 247-08-9353 Employer's Name: Prysmian Cables and Systems
Address: 6647 Old Leesburg Rd. Address: 700 Industrial Ave.
City: Eastover State: SC Zip: 29044 City: Lexington State: SC Zip: 2907
Home Phone: (803) 586-9253 Work Phone: () - Insurance Carrier: Century Insurance
Preparer's Name: David N. Truitt Law Firm: Truitt Law Firm Preparer's Phone #: (803) 814-1556

A claim for workers' compensation benefits is made based on the following grounds:

Date of Injury or Illness: 10/30/13

☒ Injury ☐ Illness ☐ Repetitive Trauma ☐ Occupational Disease ☐ Physical Brain Injury ☐ Concurrent Jurisdiction

1. The claimant sustained an injury to right upper extremity, right lower extremity, right side, and resultant psychological (Part(s) of Body Injured) on 10/30/13 (Month/Day/Year) in Lexington county, state of SC.
2. Body part(s) affected are: right upper extremity, right lower extremity, right side, and resultant psychological.

Briefly describe how the accident occurred. Rewind line machine grabbed Claimant's right arm and dragged him into the machine.

3. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
4. The relationship of employer and employee existed at the time of injury.
5. At the time of the injury the claimant was performing services arising out of and in the course of employment.
6. Notice of the accidental injury was given to the Employer on 10/30/13 (Month/Day/Year) in the following manner:
In person to Channing Gardner

☒ 7. Due to injury, the claimant is in need of (check one):

☐ (a) medical examination and treatment for: _____

☒ (b) additional medical examination and treatment for: right upper extremity, right lower extremity and resultant psychological.

☒ 8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:
11/4/14 to the present.

☒ 9. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):

☒ (1) General Disability: ☒ Total ☐ Partial ☐ (2) Specific Disability: ☐ Total ☐ Partial ☐ (3) Wage Loss

9a. ☐ A determination of permanent disability is premature at this time.

☒ 10. Due to the injury, the Claimant has a serious bodily disfigurement consisting of:

10a. At the time of the injury, the Claimant was paid weekly wages of \$to be determined, and demands accounting of days worked and wages earned as provided by law.

10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:
Prysmian Cables and Systems

11. Further grounds or unusual aspects of claim:

11a. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
Dr. David Fulton, Moore Orthopaedics, Medical Park Rd., Columbia, SC; Dr. Deanna Constable, Palmetto Orthopaedic Clinic, 105 Office Park Rd., Columbia, SC

11b. To the best of your knowledge, did you have any prior permanent disability? No.
If yes, describe: _____

12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.

☐ 13a. I am filing a claim. I am not requesting a hearing at this time.

14. Estimated time needed for hearing: _____

☒ 13b. I am requesting a hearing. A \$25 fee is required.

☒ **Mediation**

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
- ☒ b. Mediation is required pursuant to Reg. 67-1802.
- ☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
- ☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Century Insurance

P.O. Box 8032, Stephens Point, WI 54481 on the 10th day of February 2015, by ☒ first class postage ☐ certified mail ☐ personal service. I verify the contents of this form are accurate and true to the best of my knowledge.

David N. Truitt Attorney chip@chiptruittlaw.com February 16, 2015
Preparer's Signature Title Email Date

Questions about the use of this form should be directed to the Claims Department at 803.737.5723. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615 as well as Reg. 67-1801.



James Ashford 247-08-9353
Claimant's Name SSN
6647 Old Leesburg Road, Eastover, SC 29044
Address City State Zip
(803) 586-9253
Home Phone Work Phone

Prysmian Power Cables
Employer's Name
700 Industrial Avenue, Lexington, SC 29072
Address City State Zip
Sentry Insurance Company
Insurance Carrier

Preparer's Name: Nicolas L. Haigler, Esquire

Law Firm: Sowell Gray Stepp & Laffitte, L.L.C.

Preparer's Phone #: (803) 929-1400

Date of Injury or Illness: 10/30/13

Estimated time for hearing: 45 minutes

Complete each information blank. Specify clearly when contentions are admitted in part and denied in part. The employer/carrier in answer to the claim, respectfully shows:

1. It is admitted the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are: Defendants admit claimant sustained a compensable injury to his right wrist; however, defendants deny claimant sustained compensable injuries to his right lower extremity, right side and/or psyche, as alleged. See also No. 11.
2. It is admitted both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are: But see No. 1 and No. 11.
3. It is admitted the relationship of employer and employee existed at the time in question. The reasons for denial are: But see No. 1 and No. 11.
4. It is admitted at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are: But see No. 1 and No. 11.
5. It is admitted notice of injury was given to the employer. The reasons for denial are: But see No. 1 and No. 11.
6. It is denied the employee needs / is entitled to additional medical care as a result of injury or illness. The reasons for denial are: Claimant reached MMI per the 02/13/15 report of Dr. Fulton with no indication of further medical treatment being medically necessary.
7. It is admitted the employee is entitled to temporary total disability for the period(s) of: However, defendants assert a credit for all benefits paid after the date of MMI, 02/13/15.
8. It is denied the employee is permanently disabled. The reasons for denial are: However, defendants admit claimant received a rating of permanent impairment from Dr. Fulton.
9. It is denied the employee has a serious disfigurement.
10. It is contended that an average weekly wage of \$1,582.73 and a compensation rate of \$743.72 applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are: Defendants contend Mediation is not appropriate in this matter until there is a finding regarding the compensability of the alleged body parts. If the claim is limited to a single scheduled member, mediation cannot be ordered. See also No. 7.

☐ Mediation

- ☐ (a) Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
- ☐ (b) Mediation is required pursuant to Reg. 67-1802.
- ☐ (c) Mediation is requested by consent of the parties pursuant to Reg. 67-1803.
- ☐ (d) Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov

I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature

Attorney for The Employer/Carrier
Title

nhaigler@sowellgray.com
Email

March 12, 2015
Date

Refer to R. 67-204 through R. 67-210 and R. 67-601 through R. 67-615. Refer to R. 67-1801 for mediation. Questions about the use of this form may be directed to the Commission's Judicial Department at (803) 737-5675 or judicial@wcc.sc.gov or mediation@wcc.sc.gov. Pursuant to R. 67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

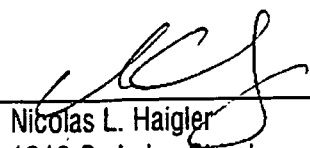
James A. Ashford v. Prysmian Power Cables
WCC File No.: 1318928
Date of Accident: 10/30/13
Claim No.: 55C098612
Our File No.: 5431/8392

(Continuation from Form 51)

11. Further contentions or grounds of defense are: All affirmative and specific defenses (see Reg. 67-603), including but not limited to § 42-15-20, pre-existing disability to allegedly injured members; degree of disability, if any, attributable to this injury speculative; claimant's problems personal in nature and not work-related; defendants reserve the right to amend this Answer and plead additional defenses.

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By: _____


Nicolas L. Haigler
1310 Gadsden Street
Post Office Box 11449
Columbia, SC 29211
(803) 929-1400

Attorneys for Employer/Carrier

Columbia, South Carolina

March 12, 2015

RECEIVED
MAR 12 2015
(FRONT DESK)
SC Workers' Comp Comm



James Ashford 247-08-9353
Claimant's Name SSN
6647 Old Leesburg Road, Eastover, SC 29044
Address City State Zip
(803) 586-9253
Home Phone Work Phone

Prysmian Power Cables
Employer's Name
700 Industrial Avenue, Lexington, SC 29072
Address City State Zip
Sentry Insurance Company
Insurance Carrier

Preparer's Name: Nicolas L. Haigler, Esquire Law Firm: Sowell Gray Stepp & Laffitte, L.L.C. Preparer's Phone #: (803) 929-1400

The date of injury reported on Form 12A is: 10/30/13 (m/d/yyyy)

Check appropriate section(s). The employer's representative requests a hearing to:

- I. ☒ Stop payment of compensation. Claimant has reached maximum medical improvement and Claimant continues to receive temporary compensation payments. The employer's representative requests a hearing pursuant to § 42-9-260(D) to stop payment of temporary compensation. A hearing requested pursuant to this section must be held within sixty days of the date of the request.

Claimant reached maximum medical improvement on 02/13/15 (m/d/yyyy) (copy of medical report must be attached).
Compensation payments are current as of 04/03/15 (m/d/yyyy) and shall continue until otherwise ordered or until Form 17 is signed by the claimant.
A Form 17 was offered and refused on 03/04/15 (m/d/yyyy).

- II. ☐ Address suspension, termination, or reduction of temporary disability payments for any cause.

- ☐ (a) At any time pursuant to § 42-9-260(E).
☐ (b) After the one-hundred-fifty day period has expired pursuant to § 42-9-260(F), R.67-505 and R.67-506.

The basis for the termination/suspension is

- III. ☒ Determine if compensation is due pursuant to § 42-9-10, § 42-9-20 or § 42-9-30 and, if so, in what amount, based on the following grounds: Claimant has five (5%) percent impairment to his right upper extremity per the 02/13/15 report of Dr. Fulton.

Claimant reached maximum medical improvement on 02/13/15 (m/d/yyyy) (copy of medical report must be attached).

- IV. ☒ Request Credit for Overpayment of temporary compensation pursuant to § 42-9-210.

- V. ☐ Determine amount of compensation for claims involving a fatality. (Dependency investigation must be attached).

- ☐ (a) Payment of unpaid balance of compensation when employee dies pursuant to § 42-9-280.
☐ (b) Amount of compensation for death of employee due to accident pursuant to § 42-9-290.

- VI. ☐ Mediation

- ☐ (a) Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
☐ (b) Mediation is required pursuant to Reg. 67-1802.
☐ (c) Mediation is requested by consent of the parties pursuant to Reg. 67-1803.
☐ (d) Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Failure to respond pursuant to Reg. 67-208 B in writing or by submission of a Form 22 may result in ordered mediation pursuant to Reg. 67-1801 B.
Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to R. 67-211 by delivering a copy to: Ms. Amy Bracy, Judicial Director, South Carolina Workers' Compensation Commission, 1333 Main Street, Suite 500, Columbia, SC 29202-1715 (via hand delivery) and David N. Truitt, Esquire, 925 Calhoun Street, Columbia SC 29201, (via U.S. Mail)

on the 30th day of April, 2015 by ☒ first class mail, ☐ certified mail, ☐ personal service. A \$25.00 filing fee and updated Form 18 is required.

Preparer's Signature

Attorney for The Employer/Carrier
Title

nhaigler@sowellgray.com
Email

April 30, 2015
Date

Questions about the use of this form should be directed to the Judicial Department at (803) 737-5675, or judicial@wcc.sc.gov or mediation@wcc.sc.gov. Refer to Regulations 67-211, 67-504, 67-505, 67-506; and 67-510.

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1318928
Carrier File #: 55C098612
May 14, 2015

NOTICE OF HEARING

JAMES A ASHFORD v. PIRELLI NORTH AMERICA INC

Subject: To determine if employer/carrier may stop payment, and if so, to determine if claimant is entitled to any further benefits. Carrier also request credit for temporary total benefits paid in excess of award.

Date: June 23, 2015 at 04:00 PM

Location: SC Workers' Compensation Commission, 1333 Main Street, Suite 500 Hearing Room B
Columbia, SC 29202

South Carolina Regulations 67-601 through 67-615 govern hearings before the South Carolina Workers' Compensation Commission. The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Attorneys must file a Form 58 with proof of service pursuant to Regulation 67-611. Postponements are only granted pursuant to Regulation 67-613. Please visit www.wcc.sc.gov/Commissioners to view Commissioners' Preferences. If you have questions regarding this matter, please contact the office of the undersigned Jurisdictional Commissioner.

Commissioner Mike Campbell
803-737-5678, bcheeseboro@wcc.sc.gov

CERTIFICATE OF SERVICE – This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail.

By: Barbara Cheeseboro, SC Workers' Compensation, May 14, 2015

Party

Employee: JAMES A ASHFORD

Employer: PIRELLI NORTH AMERICA INC
Carrier: Sentry Insurance A Mutual Company

Attorney

David N. Truitt
chip@chiptruittlaw.com
803-629-0848

Nicolas L Haigler
nhaigler@sowellgray.com
803-929-1400



James Ashford 247-08-9353
Claimant's Name SSN
6647 Old Leesburg Road, Eastover, SC 29044
Address City State Zip
(803) 586-9253
Home Phone Work Phone

Prysmian Power Cables
Employer's Name
700 Industrial Avenue, Lexington, SC 29072
Address City State Zip
Sentry Insurance Company
Insurance Carrier

Preparer's Name: Nicolas L. Haigler, Esquire Law Firm: Sowell Gray Stepp & Laffitte, L.L.C. Preparer's Phone #: (803) 929-1400

A claim for workers' compensation benefits is made based on the following grounds:

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$743.72 (max 2013) 2. AWW: \$1,582.73 Date of Injury: 10/30/13
 3. Type of injury and body part(s): Right wrist (admitted); right lower extremity, right side, and psyche (all denied).
 4. Facts in controversy: STOP PAY HEARING. (1) Whether claimant has reached MMI; (2) If so, the date of MMI (defendants contend 02/13/15); (3) Whether defendants are entitled to terminate TTD benefits; (4) Whether defendants are entitled to credit for all TTD benefits paid after the date of MMI; (5) Whether claimant sustained permanent partial disability to the right arm; (6) Whether claimant is entitled to further benefits under the Act; and (7) Whether claimant's current problems are causally-related to the accident.
 5. Legal issues involved: (1) See No. 4 above; (2) § 42-9-260; (3) § 42-9-30; (4) § 42-15-60; (5) Reg. 67-506; (6) *Curriel v. Envtl. Management Servs.*, 655 S.E.2d 482 (2007); and (7) Causation.
 6. Unusual aspects: None to defendants' knowledge.
 7. Witnesses (designate if expert):* Claimant.
 8. Exhibits: Claimant's deposition, if necessary.
 9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance): See attached Notice of Witnesses and Medical Reports to be Introduced as Evidence on Behalf of the Defendants.
 10. Name, address, and specialty, if any, of the treating physician: David B. Fulton, M.D., Moore Orthopedics, 104 Saluda Pointe Drive, Lexington, SC 29072
 11. Impairment rating(s); body part(s); physician and date of opinion: Five (5%) percent impairment of the right upper extremity per the 02/13/15 report of Dr. Fulton.
 12. I am amending my Form 50/51 in the following manner: N/A
- ☐ Mediation
- ☐ (a) Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
- ☐ (b) Mediation is required pursuant to Reg. 67-1802.
- ☐ (c) Mediation is requested by consent of the parties pursuant to Reg. 67-1803.
- ☐ (d) Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

I verify the contents of this form are accurate and true to the best of my knowledge.

I certify I have served this document pursuant to R. 67-211 by delivering a copy to: Honorable R. Michael Campbell, II, Commissioner, South Carolina Workers' Compensation Commission, 1333 Main Street, Suite 500, Columbia, SC 29202-1715 (via E-Case Upload) and David N. Truitt, Esquire, 925 Calhoun Street, Columbia SC 29201, (via e-mail and U.S. Mail).

on the 4th day of June, 2015 by ☒ first class mail, ☐ certified mail, ☐ personal service.
Signature: [Signature] Email: nhaigler@sowellgray.com
Date of hearing: June 23, 2015 Time needed for hearing: 45 minutes
On behalf of ☐ Claimant ☒ Employer

File this form and proof of service on the opposing party according to R.67-611. Do not send medical reports.
*Commissioners reserve the right to admit expert witnesses at hearings.

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1318928

James Ashford,	)	
	)	
Claimant,	)	
	)	
v.	)	<u>NOTICE OF WITNESSES AND</u>
	)	<u>WRITTEN MEDICAL REPORTS TO</u>
Prysmian Power Cables,	)	<u>BE INTRODUCED AS DIRECT</u>
	)	<u>EVIDENCE ON BEHALF OF</u>
Employer,	)	<u>DEFENDANTS</u>
	)	
Sentry Insurance Company,	)	
	)	
Carrier,	)	
	)	
Defendants.	)	

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND DAVID N. TRUITT, ESQUIRE, ATTORNEY FOR THE CLAIMANT

YOU ARE HEREBY NOTIFIED THAT THE Defendants, pursuant to the provisions of the South Carolina Workers' Compensation Act and South Carolina Code Section 1-23-330, (1976, as amended), herewith submits the following medical reports as direct evidence on behalf of the Defendants, to-wit:

	Physician	Practice	Dates of Service	Page Numbers
1.	Joseph Moran, DPM	Palmetto Podiatry Associates, LLC	04/15/15 – 03/16/06	1 – 50
2.	Subhash Patel, DO	Southeastern Orthopaedics	03/09/15	51 – 53
3.	David B. Fulton, M.D.	Moore Orthopedics	02/16/15 – 03/24/14	54 – 82
4.	Deanna Constable, M.D.	Palmetto Orthopedic Clinic, PA	03/21/14 – 12/12/13	83 – 97
5.		Lexington Medical Center – Occupational Health	11/07/13 – 10/30/13	98 – 105

	Exhibits	Date of Reports	Page Numbers
A.	Claimant's deposition, if necessary.		

Unusual Problems: None to defendants' knowledge.

YOU ARE FURTHER HEREBY NOTIFIED that you have the right of cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the depositions of any of the physicians, whose reports are submitted, for the purposes of cross-examination.

YOU ARE FURTHER NOTIFIED that the originals of the documents referred to herein, or photocopies received from said physicians/others, are being herewith forwarded to the South Carolina Workers' Compensation Commission, for insertion in the file of the South Carolina Workers' Compensation Commission and inclusion into evidence on behalf of the employer-defendants.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Defendants: Claimant.

SOWELL GRAY STEPP & LAFFITTE, L.L.C.


 Nicolas L. Haigler
 1310 Gadsden Street
 Post Office Box 11449 (29211)
 Columbia, South Carolina 29201
 (803) 929-1400

ATTORNEY FOR DEFENDANTS

Columbia, South Carolina

June 4, 2015

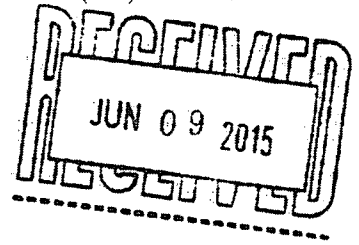
5431/8392

chiptruitlaw.com
chip@chiptruitlaw.com

Truitt Law Firm, LLC
925 Calhoun St.
Columbia, SC 29201

phone: (803) 814-1556
facsimile: (803) 814-1557

June 8, 2015



Via eCase

Commissioner R. Michael Campbell, II
S.C. Workers' Compensation Commission
1333 Main Street, Suite 500
Columbia, South Carolina 29202-1715

RE: W.C.C. File No: 1318928
Employee: James A. Ashford
Employer: Prysmian Power Cables
Date of Injury: 10/30/2013

Dear Commissioner Campbell:

Enclosed please find our Pre-Hearing Brief, APA, and Notice of Witnesses in connection with the above-referenced case. By copy of this letter I am also serving this information upon opposing counsel. If you have any questions with regard to the enclosed, please do not hesitate to contact me.

Thank you for your consideration.

Sincerely,

David N. Truitt, Esquire

Enclosure

cc:

Nicholas Haigler, Esquire
Sowell Gray Stepp & Lafitte, LLC
1310 Gadsden St.
Columbia, SC 29211



Claimant's Name: James Ashford Employer's Name: Prysmian Power Cables
Address: 6647 Old Leesburg Rd. Address: 700 Industrial Ave.
City: Eastover State: SC Zip: 29044 City: Lexington State: SC Zip: 29072
Home Phone: (803) 586-9263 Work Phone: () - Carrier: Sentry Insurance Company
Preparer's Name: David N. Truitt, Attorney for Claimant Preparer's Phone #: (803) 814-1556

A claim for workers' compensation benefits is made based on the following grounds:

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$743.72 2. AWW: \$1,582.73 Date of Injury: 10/30/13
3. Type of injury and body part(s): Right upper extremity, right lower extremity, right side, psychological
4. Facts in controversy: (1) Whether Claimant needs additional medical/psychological care?; (2) Whether Claimant is at MMI?; (3) If Claimant is at MMI, whether Claimant is permanently and totally disabled? (4) Whether Defendants may stop TTD benefits?
5. Legal issues involved: Claimant has filed Form 50 alleging permanent and total disability; therefore, mandatory mediation must be held prior to a Form 21 hearing. All applicable statutes, common law, and regulations.
6. Unusual aspects: See #5 above. Defendant is also providing ongoing medical care for Claimant's right upper extremity.
7. Witnesses (designate if expert):* Claimant. Claimant reserves the right to present testimony and evidence in response to evidence submitted by the Defendant.
8. Exhibits: None. Claimant reserves the right to present testimony and evidence in response to evidence submitted by Defendant. Claimant requests that W.C.C. file # 1318928 be made part of this record.
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance):
APA submissions.
10. Name, address, and specialty, if any, of the treating physician: Dr. David B. Fulton, Moore Orthopaedics, 104 Saluda Point Dr., Lexington, SC 29072
11. Impairment rating(s); body part(s); physician and date of opinion: 5% to right upper extremity by Dr. Fulton, 2/13/15.
12. I am amending my Form 50/51 in the following manner: _____

☒ **Mediation.**

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
☒ b. Mediation is required pursuant to Reg. 67-1802.
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I verify the contents of this form are accurate and true to the best of my knowledge.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Nicholas Haigler, Esq., 1310 Gadsden St. Columbia, SC 29211 on the 8th day of June 2015 by: ☐ first class postage ☐ certified mail ☒ personal service.

Signature: David N. Truitt Email: chip@chiptruitt.com
Date of hearing: June 23, 2015 Time needed for hearing: 30 minutes

Questions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615; as well as Regulation 67-1801. File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports. * Commissioners reserve the right to admit expert witnesses at hearings.

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO: 1318928

James Ashford,
Claimant,

v.

Prysmian Power Cables,
Employer, and

Sentry Insurance Company,
Carrier,

Defendants.

NOTICE OF SUBMISSION OF
DIRECT EVIDENCE ON
BEHALF OF CLAIMANT

TO: Nicholas Haigler, Esquire
Sowell Gray Stepp & Lafitte, LLC
1310 Gadsden St.
Columbia, SC 29211

YOU ARE HEREBY NOTIFIED that the Claimant, pursuant to the provisions of Rule 67-30 of the South Carolina Workers' Compensation Commission and Chapter 23, Article 1, §1-23-330, Code of Laws of South Carolina (1976), as amended, herewith submits:

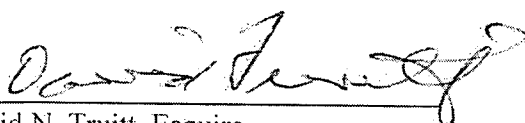
<u>NAME OF PHYSICIAN/OTHER</u>	<u>FACILITY</u>	<u>DATE OF REPORT</u>	<u>NUMBER OF PAGES</u>
1. Dr. Usama Gabr	Columbia Clinic, Pain & Spine Institute	03/18/15	106-109

YOU ARE HEREBY FURNISHED with a copy of the above listed reports and evidence
and

FURTHER HEREBY NOTIFIED that you have the right of cross-examination, and
should you desire to exercise said right, you are to forthwith schedule the deposition(s) of the

aforementioned witnesses, including but not limited to health care providers, for the purpose of cross-examination.

TRUITT LAW FIRM

BY: 
David N. Truitt, Esquire

6/8, 2015
Columbia, South Carolina

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO: 1318928

James Ashford,
Claimant,
v.
Prysmian Power Cables,
Employer, and
Sentry Insurance Company,
Carrier,
Defendants.

NOTICE OF SUBMISSION OF
THE WITNESS LIST AS
WITNESSES TO BE CALLED ON
BEHALF OF CLAIMANT

TO: Nicholas Haigler, Esquire
Sowell Gray Stepp & Lafitte, LLC
1310 Gadsden St.
Columbia, SC 29211

You are hereby notified pursuant to 3A of the requirements for submitting a Pre-Hearing Brief that the Claimant submits the attached witness list as witnesses to be called on behalf of the Claimant:

Witness List

Mr. James Ashford

You are further notified that a copy of the witness list referred to herein is being forwarded to the South Carolina Workers' Compensation Commission for insertion into the file and verification of witnesses to be called on behalf of the Claimant.

TRUITT LAW FIRM, P.A.

BY: 
David N. Truitt, Esquire

6/8, 2015
Columbia, South Carolina

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO: 1318928

James Ashford,

Claimant,

v.

Prysmian Power Cables,

Employer, and

Sentry Insurance Company,

Carrier,

Defendants.

AFFIDAVIT OF MAILING

The undersigned hereby certifies that he has hand-delivered, on the date set forth below, a copy of the document described below, in the above entitled action to the following:

TO: Via eCase
Commissioner R. Michael Campbell, II
S.C. Workers' Compensation Commission
1333 Main Street, Suite 500
Columbia, South Carolina 29202-1715

Nicholas Haigler, Esquire
Sowell Gray Stepp & Lafitte, LLC
1310 Gadsden St.
Columbia, SC 29211

DOCUMENT: Pre-Hearing Brief; Notice of Witnesses and APA Submissions

DATE: June 8, 2015

Sworn to before me this

8th day of June, 2015

Christopher W. Galt (L.S.)
Notary Public for South Carolina

My Commission Expires: 2-18-2024

David N. Truitt
David N. Truitt, Esquire

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO: 1318928

James Ashford,

Claimant,

v.

Prysmian Power Cables,

Employer, and

Sentry Insurance Company,

Carrier,

Defendants.

NOTICE OF SUBMISSION OF
DIRECT EVIDENCE ON
BEHALF OF CLAIMANT
SUPPLEMENTAL

TO: Nicholas Haigler, Esquire
Sowell Gray Stepp & Lafitte, LLC
1310 Gadsden St.
Columbia, SC 29211

YOU ARE HEREBY NOTIFIED that the Claimant, pursuant to the provisions of Rule 67-30 of the South Carolina Workers' Compensation Commission and Chapter 23, Article 1, §1-23-330, Code of Laws of South Carolina (1976), as amended, herewith submits:

<u>NAME OF PHYSICIAN/OTHER</u>	<u>FACILITY</u>	<u>DATE OF REPORT</u>	<u>NUMBER OF PAGES</u>
1. Dr. Usama Gabr	Columbia Clinic, Pain & Spine Institute	03/18/15	106-109
2. Dr. Timothy Zgleszewski	Palmetto Spine Sports Medicine, P.A.	06/03/15	110-116

YOU ARE HEREBY FURNISHED with a copy of the above listed reports and evidence
and

FURTHER HEREBY NOTIFIED that you have the right of cross-examination, and should you desire to exercise said right, you are to forthwith schedule the deposition(s) of the aforementioned witnesses, including but not limited to health care providers, for the purpose of cross-examination.

TRUITT LAW FIRM

BY: 
David N. Truitt, Esquire

6/15, 2015
Columbia, South Carolina

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO: 1318928

James Ashford,

Claimant,

v.

Prysmian Power Cables,

Employer, and

Sentry Insurance Company,

Carrier,

Defendants.

AFFIDAVIT OF SERVICE

The undersigned hereby certifies that he has hand-delivered, on the date set forth below, a copy of the document described below, in the above entitled action to the following:

TO: Via eCase
Commissioner R. Michael Campbell, II
S.C. Workers' Compensation Commission
1333 Main Street, Suite 500
Columbia, South Carolina 29202-1715

Hand-delivered
Nicholas Haigler, Esquire
Sowell Gray Stepp & Lafitte, LLC
1310 Gadsden St.
Columbia, SC 29211

DOCUMENT: ***Supplemental*** APA Submissions

DATE: June 15, 2015

Sworn to before me this

15th day of June, 2015
Anthony L. Hoats (L.S.)
Notary Public for South Carolina
My Commission Expires: 2-18-24

David N. Truitt
David N. Truitt, Esquire

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO: 1318928

James Ashford,
Claimant,

v.

Prysmian Power Cables,
Employer, and

Sentry Insurance Company,
Carrier,

Defendants.

NOTICE OF SUBMISSION OF
DIRECT EVIDENCE ON
BEHALF OF CLAIMANT

2nd SUPPLEMENTAL

TO: Nicholas Haigler, Esquire
Sowell Gray Stepp & Lafitte, LLC
1310 Gadsden St.
Columbia, SC 29211

YOU ARE HEREBY NOTIFIED that the Claimant, pursuant to the provisions of Rule 67-30 of the South Carolina Workers' Compensation Commission and Chapter 23, Article 1, §1-23-330, Code of Laws of South Carolina (1976), as amended, herewith submits:

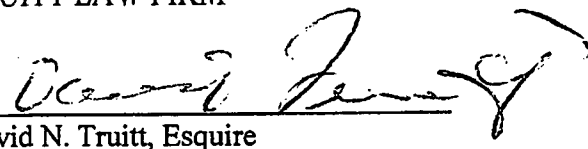
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1. Dr. Usama Gabr	Columbia Clinic, Pain & Spine Institute	03/18/15	106-109
2. Dr. Timothy Zgleszewski	Palmetto Spine Sports Medicine, P.A.	06/03/15	110-116
3. Todd Hanson, licensed therapist	Post Trauma Resources	03/02/15- 04/07/15	117-123

YOU ARE HEREBY FURNISHED with a copy of the above listed reports and evidence
and

FURTHER HEREBY NOTIFIED that you have the right of cross-examination, and should you desire to exercise said right, you are to forthwith schedule the deposition(s) of the aforementioned witnesses, including but not limited to health care providers, for the purpose of cross-examination.

TRUITT LAW FIRM

BY:


David N. Truitt, Esquire

6/16, 2015

Columbia, South Carolina

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO: 1318928

James Ashford,

Claimant,

v.

Prysmian Power Cables,

Employer, and

Sentry Insurance Company,

Carrier,

Defendants.

AFFIDAVIT OF SERVICE

The undersigned hereby certifies that he has hand-delivered, on the date set forth below, a copy of the document described below, in the above entitled action to the following:

TO: Via eCase
Commissioner R. Michael Campbell, II
S.C. Workers' Compensation Commission
1333 Main Street, Suite 500
Columbia, South Carolina 29202-1715

Hand-delivered
Nicholas Haigler, Esquire
Sowell Gray Stepp & Lafitte, LLC
1310 Gadsden St.
Columbia, SC 29211

DOCUMENT: *2nd Supplemental* APA Submissions

DATE: June 16, 2015

Sworn to before me this

16th day of June, 2015
Christopher Z. DeLoach (L.S.)
Notary Public for South Carolina
My Commission Expires: 2-18-24

David N. Truitt
David N. Truitt, Esquire

MEDICAL QUESTIONNAIRE

Re: James Ashford

DOI: 10/30/13

1. Do you believe to a reasonable degree of medical certainty that Mr. James Ashford has a psychological injury or condition?

Yes ☒ No ☐

2. If yes to question number 1, do you believe to a reasonable degree of medical certainty that Mr. James Ashford's October 30, 2013, work-related right upper extremity physical injury most probably induced his resultant psychological injury or condition?

Yes ☒ No ☐

3. Do you believe to a reasonable degree of medical certainty that the treatment which you have heretofore provided to Mr. James Ashford was reasonable, necessary and geared toward tending to lessen the period of disability stemming from his resultant psychological injury or condition emanating from his work-related physical injury?

Yes ☒ No ☐

4. Do you believe to a reasonable degree of medical certainty that Mr. James Ashford presently continues to require medical treatment for his resultant psychological injury or condition emanating from his work-related physical injury?

Yes ☐ No ☒

If yes, please explain:

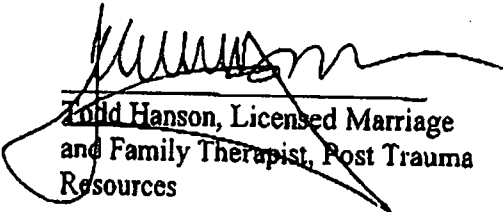
5. Do you believe to a reasonable degree of medical certainty that Mr. James Ashford has reached maximum medical improvement as to his resultant psychological injury or condition emanating from his work-related physical injury?

Yes ☒ No ☐

6. Is all recommended care and treatment as listed in your office notes and this Questionnaire for James Ashford's psychological work-related injury reasonable, necessary and geared toward tending to lessen the period of disability as stated to a reasonable degree of medical certainty?

Yes ☒ No ☐

I, Todd Hanson, hereby certify that my responses to the above-listed questions represent my opinion, to a reasonable degree of medical certainty, as to each of these points.


Todd Hanson, Licensed Marriage
and Family Therapist, Post Trauma
Resources

06-15-2015
Date

Ashford, James A.

Progress Note

Date: 4/7/2015
Provider: Todd Hanson, LMFT
Visit Type: Scheduled

Patient: Ashford, James
Date of Birth: 2/7/1956
Sex: Male
Home Phone: - -

Age: 59

Work Phone: - -

Content/Process**Session Content:**

Client reports he was deposed 2 weeks ago- reports it was a stressful experience- was denied a 2nd opinion he was seeking regarding his injury. Client reports he is trying to manage his stress levels/stay calm. Explored what is in client's control- focus on that- letting go of what is not in his control. Client reports that he has been experiencing bumps on the back of his head- was told this was probably stress related. Spiritual resources explored. Client is trying to look at the benefits of getting out of the house as he anticipates going back to work- "I want to do my job." Still is not sleeping adequately- only 2 hours last night.

Interventions

- 1) active listening, provision of support for recovery
- 2) behavioral techniques -- rehearse coping skills
- 3) cognitive modification -- reviewed relationship between thoughts and feelings
- 4) problem solving -- assist pt in generating options
- 5) ventilation related to details of current stressors

Response to Interventions: Client was active in tx.

Signatures

Hanson, LMFT, Todd
e-Signed by Hanson, LMFT, Todd
Date: 04/17/2015 9:30 am

Ashford, James A.

Progress Note

Date: 3/16/2016
Provider: Todd Hanson, LMFT
Visit Type: Scheduled

Patient: Ashford, James
Date of Birth: 2/7/1956
Sex: Male
Home Phone: - -

Age: 59
Work Phone: - -

Content/Process**Session Content:**

Client came in with crutches- will get cast off Friday- will go back to work Monday. Client reports that the Thursday before he came to tx, he was made to move heavy objects at work b/c of the 100% determination on his hand injury (no light duty)- was not able to work that Friday and Monday b/c of the impact of heavy lifting on his injury. Client reports "serious" headaches related to his current stress levels- denies hx of headaches. Client attempts to keep his mind off stress/the job. Client continues to worry about rumors he is hearing at work. Client is type-2 diabetic. Client reports that he is not a quitter by nature- is not able to quit his job b/c of bills (inadequate finances). Hx of enjoying his job. Client reported on difficulty in dealing with worker's comp. Discussed distraction techniques.

Interventions

- 1) active listening, provision of support for recovery
- 2) behavioral techniques -- rehearse coping skills
- 3) cognitive modification -- reviewed relationship between thoughts and feelings
- 4) problem solving -- assist pt in generating options
- 5) ventilation related to details of current stressors

Response to Interventions: Client was active in tx.

Signatures

Hanson, LMFT, Todd
e-Signed by Hanson, LMFT, Todd
Date: 04/17/2015 9:17 am

Ashford, James A.

Post Trauma Resources
1709 Laurel Street
Columbia, South Carolina 29201
803.765.0700

Intake Note

Date: 3/2/2015
Provider: Todd Hanson, LMFT
Visit Type: Scheduled
Others Present: Ruth

Patient: Ashford, James
Date of Birth: 2/7/1956
Sex: Male
Home Phone: - -

Age: 59

Work Phone: - -

Identifying Information

The patient is a 59 year old male who is presently living with his wife. The history was provided by client and wife.

Chief Complaint/History of Present Illness

M. 35 years- together 40. 3 kids- 40, 36 and 32. Reason for seeking counseling- "stress from job and worker's comp." Injury at work October 30th, 2013- crushed right hand- reports it took 1 year to get surgery on it. Client reports that his medical providers didn't seem to believe he was in as much pain as he was. Client reports that he was told 2 weeks ago that he was 100% ready to return to work- client disagrees that he is 100%- continued weakness in hand, numbness and pain. Client reports he wakes up in middle of the night b/c of his hand being numb and sharp pains. Being the team leader at work- very physical- reports he is only able to use his left hand currently due to the injury. Client reports that other employees have been willing to help him, "but I have to do my job at 100%." Client reports stress related to rumors he is hearing at work. Client reports he does not feel he can continue working for 3 more years (how much longer he has to retire under normal circumstances). Hx of "bumping heads" with top manager. Client reports feeling the stress is "getting to be too much-" is "snapping" at wife- hx of being more laid back. Client clarified that he would like wife to ask more questions (when asked how wife can be helpful in client managing his stress). Client reports getting angry when thinking about his job and current situation- hx as a workaholic. Wife feels client looks more tense than prior to injury/aftermath. Client reports that he and wife had retirement "mapped out- this messed that up." "Chest feels stressed." Used to going to the gym- "can't now." Client gets up in middle of the night in pain. Deep sighs over the last year. Chest breathing in session- went over the calming breath and diaphragmatic breathing to reduce symptoms of autonomic arousal. Normalized anger.

Ashford, James A.

DSM-IV Diagnosis

Axis I: 309.28 Adjustment Disorder with Mixed Anxiety and Depressed Mood (Principal)
Axis II: V71.09 No Diagnosis or Condition on Axis II
Axis III: work related injury- as reported by client
Axis IV: Occupational problems: stress related to work injury and aftermath
Axis V: Current GAF 55
Highest Past Year

Symptoms/Impairments

The patient is experiencing anxiety, depressed mood (related to hand injury), difficulty initiating/maintaining adequate sleep patterns, hypervigilant at work, increased irritability and nightmares of hand trauma.

Mental Status

The patient appears his stated age. He is well oriented in all spheres. Regarding level of consciousness, he appears alert. Affect is appropriate. Mood is euthymic. He presented himself in a neatly dressed and well-groomed fashion. Eye contact can be described as good. His speech is logical, coherent, and goal-directed. Recent memory appears unimpaired. Remote memory is not impaired. Psychomotor activity can be characterized by normal movements and activity level. Regarding conceptual disorganization, none is evident. His thought content is characterized by no significant preoccupations. Regarding perceptual functioning, the patient denies hallucinations and none are evident. Attitude can be described as cooperative and interested. As far as insight is concerned, the patient verbalizes awareness of problems and sees consequences. Judgment is good. Attention/Concentration is characterized by an ability to attend and maintain focus. Regarding impulse control the patient is reflective and able to resist urges.

Risks

Suicide: Not Evident
Details: client denies

Physical Violence: Not Evident
Details: client denies

Substance Abuse: Not Evident
Details: client denies

Medications

Medication: None

Goals

Treatment Goal #1: Identification of early signs, antecedents, and symptoms of decompensation and develop an effective plan of action
Date Defined: 3/2/2015

Treatment Goal #2: Increase client's ability to process through his thoughts and feelings about his work related injury and it's impact on his life
Date Defined: 3/2/2015

Signatures

Ashford, James A.

Hanson, LMFT, Todd
e-Signed by Hanson, LMFT, Todd
Date: 04/17/2015 9:07 am

123

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION . . .
WCC FILE NO. 1318928

JAMES ASHFORD,	)	
	)	HEARING
CLAIMANT,	)	BEFORE COMMISSIONER
	)	R. MICHAEL CAMPBELL, II
v.	)	
	)	<u>TRANSCRIPT</u>
PIRELLI NORTH AMERICA,	)	
INCORPORATED,	)	
	)	
EMPLOYER,	)	
AND	)	
	)	
SENTRY INSURANCE, A	)	
MUTUAL COMPANY,	)	
	)	
CARRIER,	)	
DEFENDANTS.	)	
_____	)	

THE WORKERS' COMPENSATION HEARING, TAKEN
BEFORE CORA ELLIS BRUTON, A NOTARY PUBLIC IN AND FOR
THE STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF
3:00 P.M., TUESDAY, JUNE 23, 2015, SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION, 1333 MAIN STREET,
COLUMBIA, SOUTH CAROLINA 29202.

CORA ELLIS BRUTON
COURT REPORTER
131 BROWNING COURT
LEXINGTON, SOUTH CAROLINA 29073
803-397-0189

APPEARANCES

FOR THE CLAIMANT

DAVID S. TRUITT, ESQUIRE
TRUITT LAW FIRM, LLC
925 CALHOUN STREET
COLUMBIA, SOUTH CAROLINA 29201
803-814-1556

FOR THE DEFENDANT

NICHOLAS L. HAIGLER, ESQUIRE
SOWELL, GRAY, STEPPE & LAFFITTE, LLC
POST OFFICE BOX 11449
COLUMBIA, SOUTH CAROLINA 29211
803-929-1400

REPORTED BY

CORA ELLIS BRUTON
COURT REPORTER
131 BROWNING COURT
LEXINGTON, SOUTH CAROLINA 29073
803-397-0189

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EXHIBITS

(No Exhibits Proffered)

1 THE COURT: Today's hearing date is June 23rd,
2 2015. This is South Carolina Workers' Compensation
3 File Number 1318928. This is the case of the Claimant
4 James A. Ashford, represented by Attorney David N.
5 Truitt. The Employer is Pirelli North America,
6 Incorporated. The Carrier is Sentry Insurance Mutual
7 Company, represented by Attorney Nicholas L. Haigler.
8 The date of accident is October 30th, 2013. The
9 average weekly wage is \$1,582.73, with a corresponding
10 compensation rate of \$743.72.

11 APAs have been submitted. Are there any
12 objections to APAs, jurisdiction, venue, or any other
13 items?

14 MR. HAIGLER: Yes, Your Honor. Defendants object
15 to the second supplemental APA submission,
16 specifically APA Number 3. It is pages 117 through
17 123 of the APAs. They include a medical questionnaire
18 of a Todd Hanson, Licensed Marriage and Family
19 Therapist and three reports from Dr. Hanson.
20 Objection is two-fold; one that the evidence was
21 submitted untimely to you. On that issue, the three
22 reports were from March and April, which is way more
23 than two months prior to the date in which he had to
24 submit this stuff timely. So it's really no
25 explanation to why that was untimely. Secondly, the

1 questionnaire is dated 6/15/15, which means it's
2 untimely, too. And so we would object on the
3 timeliness. The second issue of -- second part of my
4 objection is that the questionnaire providing a quote,
5 "medical opinion to a reasonable degree of medical
6 certainty" as to Mr. Ashford's alleged psychological
7 injury or condition, is provided by a licensed
8 marriage and family therapist. He is not any kind of
9 medical professional. He is not a psychologist, a
10 psychiatrist or a medical doctor. So we would ask
11 that this be excluded on the basis that he is not an
12 expert and cannot provide an expert opinion on this
13 issue.

14 THE COURT: Mr. Truitt, would you like to
15 respond?

16 MR. TRUITT: Well, other than the fact this is --
17 this is -- when we request these records we -- we
18 can't make them give them to us in a timely manner.
19 That's the quickest we could get them. We get them to
20 the Defense attorney as soon as we can. My other
21 alternative is to subpoena the person for the hearing,
22 have the person here for the hearing. We don't -- I
23 know Mr. Haigler does that on occasion. We generally
24 don't do that, because we don't think that's very good
25 as a practitioner. We certainly could have done that .

1 in that case and I can still do it now. But he's had
2 this as soon as I got it to him and he's had it for
3 over a week, I believe. So we would think it is no
4 prejudice whatsoever. And it's the better practice to
5 let it in instead of subpoenaing the person to the --
6 to the hearing.

7 THE COURT: And to the point of letting it in as
8 discussed in our pre-hearing conference, I'm going to
9 allow it in. And I know, Mr. Haigler, you had
10 requested a determination on whether the marriage
11 counselor was qualified to give the opinions that they
12 have and I will address that in my Order.

13 MR. TRUITT: Thank you, Commissioner.

14 THE COURT: Any further objections?

15 MR. HAIGLER: Are you leaving the record open for
16 me to depose --

17 THE COURT: Yes. I did not say that and I'm glad
18 you brought it up. But I will leave the record open
19 so that you can depose the doctor. Anything more?

20 MR. TRUITT: No. Other than as far as the issue
21 of the Form 50 do you want that on the record now or
22 --

23 THE COURT: I'll let you do that when you state
24 your position.

25 MR. TRUITT: Okay.

1 THE COURT: Without further objection, the
2 Commission's File becomes a part of the record with
3 the exception of self-serving declarations and
4 unstipulated medical reports.

5 Mr. Haigler, we are here today on your Form 21,
6 so sir, if you would please put your position on the
7 record for us and let us know exactly what you're
8 seeking today?

9 MR. HAIGLER: Thank you, Commissioner. I will
10 absolutely do that. Mr. Ashford sustained a right
11 wrist injury on October 13th. Other body parts --
12 which is an admitted injury, by the way. Other body
13 parts which are alleged are a right lower extremity
14 injury, which we deny; a right side injury, which we
15 deny; and a psychological injury or overlay, which we
16 also deny. We are here on a stop pay hearing. Mr.
17 Ashford reached MMI per the authorized treating
18 physician Dr. Fulton on February 13th, 2015, with no
19 restrictions and five percent permanent partial
20 impairment to his right upper extremity. There is no
21 contrary opinion anywhere in the record as to MMI.
22 There is only one opinion on that, and it's Dr.
23 Fulton's. We are requesting specifically that if you
24 find that he's reached MMI, that you find that we are
25 entitled to a credit from the date of MMI forward for

1 everything we have paid in TTD benefits. And we are
2 also asking that you make a determination as to
3 whether he sustained any permanent partial disability
4 to his right arm. We are also asking that you deny
5 the compensability of the right lower extremity, the
6 right side and the psychological overlay. Moreover,
7 I'd like to point out, because I know that the
8 contrary opinion will be that this gentleman is
9 entitled to a second or third opinion and further
10 medical treatment. He's had a second and third
11 opinion. There is no evidence, however, that he
12 requires -- there is no evidence -- excuse me -- under
13 42-15-60, which requires that the Claimant prove to a
14 reasonable degree of medical certainty that additional
15 medical treatment would tend to lessen his period of
16 disability. There is no evidence anywhere in the
17 record that suggests that. In fact, we recently had
18 an EMG done and the results of that would be a three
19 quote possibility. One was a possible X; one was a
20 possible X, and the other was a possible X. That in
21 and of itself does not provide any evidence to a
22 reasonable degree of medical certainty is a
23 possibility, which doesn't meet the standard. So
24 respectfully there is absolutely no evidence, one that
25 he is not at MMI, and two; that he needs additional

1 medical treatment to lessen his period of disability.

2 There is no evidence to that -- to that effect.

3 The other issue that has arisen since I filed my
4 Form 21, is whether his current problems are even
5 causally related to this accident. Dr. Fulton in his
6 final report indicated and asked the Claimant point
7 blank about his diabetic past and whether suggesting
8 that potentially his right upper extremity problems
9 could be diabetic neuropathy. In fact, the EMG that
10 was done two weeks ago suggested that as well. So we
11 are -- I'm not asking that you deny anything. I'm
12 just simply suggesting that the question is out there
13 whether his current problems are even related to his
14 accident.

15 The final thing I will note is with regard to --
16 and I'll state this again, with regard to the report
17 regarding his psychological -- alleged, psychological
18 problems -- his psychological overlay -- his
19 psychological and I'm not going to call him doctor,
20 because he's a licensed marriage and family therapist
21 -- but Todd Hanson has indicated that he's at MMI from
22 that condition as well and requires no further
23 treatment whatsoever. So, assuming -- so in other
24 words, there is no opinion anywhere that says that
25 this gentleman is not at MMI for every condition he

1 has. So I'm not sure what other conclusion you can
2 reach other than the fact that he has reached MMI, as
3 the Claimant has not reached his burden of proof under
4 42-15-60. So, again we are asking for a determination
5 of MMI, credit, and then a determination of
6 permanency. Thank you, Commissioner.

7 THE COURT: Thank you, Mr. Haigler. Mr. Truitt.

8 MR. TRUITT: Thank you, Commissioner. First of
9 all, as I stated earlier, we filed a Form 50 alleging
10 permanent and total disability, secondary body part
11 resulting in psych from this injury and mandatory
12 mediation is required. So I think any disability at
13 this point, or ruling on disability is premature
14 because we're entitled to a hearing on that. And the
15 reason we allege permanent and total disability as a
16 result of psych is because he's -- the Claimant has
17 got an injury where -- where at this point he can't go
18 back to work and he'll tell you that under oath. The
19 problem with the case -- it's not a complicated case,
20 it's -- it's very simple. He got injured, a crush
21 injury in 2013. Dr. Fulton eventually got -- got to
22 see him. Dr. Fulton did surgery on him and Dr. Fulton
23 released him in February. He asked Dr. Fulton for a
24 second opinion in February and for some reason Dr.
25 Fulton didn't -- didn't agree to that or didn't

1 recommend it. Don't know why. Have no earthly reason
2 why he wouldn't. Because if you've got a patient
3 telling you they're in pain and not -- not satisfied
4 with where they are, essentially it's the doctor's
5 obligation to order that second opinion to see if he
6 gets better. The Workers' Comp system is to try to
7 get Mr. Ashford back to work. That's why we have it,
8 so he can go back to work. Right now he's in a
9 position if we go forward with this hearing and if you
10 were to rule on disability he'd have to be permanently
11 and totally disabled and then he'd be getting benefits
12 he may not really need to get. So it's -- it's --
13 therefore an argument about the ruling in evidence
14 doesn't make sense to me. Now, as far as MMI, we've
15 got two of the doctors, Dr. Patel and Dr. Gaber who
16 don't say MMI. They've seen him and -- and they say
17 Mr. Ashford needs an EMG Nerve Conduction Study. The
18 problem with the case is that the 21 hearing is so
19 fast and so quick in time, by the time we actually got
20 the result for the EMG Nerve Conduction Study, you
21 don't have time to get the doctor's opinions and get
22 the doctors deposed or get the doctor here to say yes
23 this is what we need to do. So we don't have an
24 answer to what they say the EMG Nerve Conduction Study
25 says. I agree with Mr. Haigler there's three

1 possibilities. And two of the three could be from the
2 work crush injury and not diabetes. So that needs to
3 be explored. So this whole hearing is really
4 premature. It's their 21 hearing, after I filed the
5 50, to try to shut the case down when he's not ready
6 to go back to work, not able to go back to work. So
7 it's kind of defeating the whole purpose of the
8 Workers' Comp system which is to get Claimant's back
9 to work. So we're asking -- first of all this is a 21
10 hearing, so we think the burden of proof is on him.
11 It's his 21 hearing. It's not my hearing. He has the
12 burden of proving it to you. We're just here asking
13 this Court to exercise your discretion and judgment to
14 say well obviously he's not at MMI at least at this
15 point. And if Dr. Patel or Dr. Gaber or Dr. Walsh or
16 somebody else that this -- this Commission can order
17 sees him for a second opinion, says yeah, Dr. Fulton
18 is right, they get a credit. We do not dispute they
19 would get a credit back to the MMI date. And then he
20 just is where he is. And we have the mandatory
21 mediation to decide whether he's permanently and
22 totally disabled or not. That's how the system works.
23 And it -- so it's really not a complicated case. And
24 there's a lot of procedure being thrown at you,
25 Commissioner to try to get this man in a position

1 where the benefits are limited to him and he can't go
2 back to work. I mean obviously, they -- the way they
3 postured the case is, it's just a hand case and he
4 can't -- and right now that's all there is and the way
5 he is now he won't be able to go back to work if
6 there's no more care done. So perplexed -- I'm
7 perplexed at the position the Defendants have taken.
8 I've had many cases like this where we just reached a
9 Consent Order and we agreed to get him looked at for a
10 second opinion. I think every Claimant in his
11 position should have a second opinion when they're
12 asking for a 21. Just -- I think that's the way it
13 should be, and see where he is. So that's our
14 position. I think it's their position and their
15 obligation to prove the case today, not ours.

16 MR. HAIGLER: May I quickly respond?

17 THE COURT: Sure, go ahead.

18 MR. HAIGLER: Well, it's interesting that he
19 can't go back to work. There's no doctor that says
20 that. In fact, the only doctor that has commented on
21 his ability to return to work says he has no
22 restrictions. It is my burden to prove he's at MMI.
23 I did that when I filed my Form 21, otherwise this
24 hearing wouldn't be going on right now. Because you
25 guys don't set them unless I include it in the Brief.

1 So I have met the burden that he's reached MMI. Once
2 I meet that burden, the burden then shifts to the
3 Claimant to prove that he's not at MMI. That's the
4 way this works in the legal practice and it's then
5 Chip's responsibility to prove that this gentleman is
6 not at MMI. He had two second opinions. A second and
7 a third opinion in March. Yeah, those doctors said he
8 needed an EMG. Well, that gave Chip three months to
9 get an EMG and a report to determine whether this guy
10 was at MMI or not. None of that has happened. None
11 of it has happened. So it's not my burden to do his
12 discovery. It's my burden to make him at MMI. And I
13 have been very clear about that with Chip from day
14 one, that I still contend this gentleman is at MMI,
15 regardless of any EMG or any report. And it's -- it's
16 -- it's inconceivable -- you know, the whole issue
17 about mandatory mediation, it's totally premature.
18 Because the -- the -- whether we have multiple body
19 parts has not even been adjudicated yet. If you find
20 today that he has a psych injury or any two body parts
21 you pick, any two, then yeah, we have to go to
22 mandatory mediation if Chip wants to, or I want to.
23 But if you find this is a right wrist injury only,
24 that's irrelevant, because there is no mandatory
25 mediation. This is a single member injury. And so

1 there is no trauma in this. You can determine
2 permanency today. Absolutely. You can determine
3 permanency if there is two body parts, because he has
4 reached MMI for both of them. According to his own
5 license marriage therapist he's reached MMI. So there
6 is no contrary opinion. If you want to determine
7 permanency today, by all means go ahead.

8 Unfortunately, the only evidence you have is that he
9 has no restrictions from going back to work. And so I
10 don't know what you're going to do with that. But
11 we're in -- we're in the exact position that the law
12 should make us in. I have met my burden of MMI and
13 there is no contrary evidence to that, period. And
14 there is a Statute that makes it very clear that that
15 burden is placed upon the Claimant, and that's
16 42-15-60. Thank you, Commissioner.

17 MR. TRUITT: Just one more point.

18 THE COURT: Go ahead, Mr. Truitt.

19 MR. TRUITT: They authorized the EMG Nerve
20 Conduction Study after Dr. Fulton had released the
21 Claimant. And now -- now they want you to just shut
22 the case down. We've got the abnormal EMG Nerve
23 Conduction Study, which they authorized and approved,
24 leading -- leading me to believe that we would
25 ultimately get a second opinion on the case. And

1 that's in e-mails that we sent back and forth. Now
2 they're trying to shut the case down and haven't sent
3 him for the second opinion. That's just not how you
4 -- how you practice.

5 MR. HAIGLER: He's had a second opinion.

6 MR. TRUITT: That's just not how you practice.
7 They've had nobody to review the EMG Nerve Conduction
8 Study. Dr. Fulton hasn't done it. Dr. Gaber hasn't
9 done it. Dr. Patel hasn't done it. Nobody has
10 reviewed the EMG Nerve Conduction Study that they
11 authorized. Now they want to shut the case down and
12 call time on me. That's just not how you -- how you
13 do it. Because they know it's abnormal. They just
14 don't want to find out what's really wrong with him.
15 They just want to shut the case down and close it out
16 and send him home. That -- that -- that's why we're
17 here.

18 THE COURT: Mr. Haigler, anything more?

19 MR. HAIGLER: I'm good. Thank you, Commissioner.

20 THE COURT: Mr. Ashford, before we get started I
21 have a couple of quick things I need to run through
22 with you. If you would please speak up and speak
23 clearly for us.

24 THE WITNESS: Okay.

25 THE COURT: And if you are asked a yes or no

1 question please give us a verbal yes or no answer.
2 Try and stay away from things like uh-huh, huh-uh,
3 that's too easily misunderstood for the record. So if
4 you could help us out with those things we would
5 appreciate it.

6 THE WITNESS: Okay.

7 THE COURT: Please raise your right hand. Do you
8 swear or affirm that the testimony you're about to
9 give is the truth, the whole truth and nothing but the
10 truth?

11 THE WITNESS: I do.

12 THE COURT: Please state your name for the
13 record.

14 THE WITNESS: James Albert Ashford.

15 THE COURT: Thank you, Mr. Ashford. Are you
16 going to defer to Mr. Truitt to --

17 MR. HAIGLER: Yes, Your Honor.

18 THE COURT: Mr. Truitt, your witness.

19 MR. TRUITT: Your Honor, I think I would like Mr.
20 Haigler to start.

21 THE COURT: Okay. That's fine. Mr. Haigler,
22 Your Witness.

23 MR. HAIGLER: Your Honor, I won't call him. I'll
24 let the records speak for themselves.

25 MR. TRUITT: You're going to -- I assume there's

1 going to be no cross examination then?

2 MR. HAIGLER: I have the right to cross examine.

3 I have the right to -- it's not my witness.

4 MR. TRUITT: It's his hearing, though.

5 MR. HAIGLER: He can do whatever he wants. I --

6 I have the right to cross examine the witness, any

7 witness, anybody does.

8 THE COURT: Yeah, I will allow him to cross

9 examine him, but if you don't want to call him.

10 MR. TRUITT: All right. I'm going to go ahead

11 and start direct.

12 THE COURT: Okay.

13 DIRECT EXAMINATION

14 BY MR. TRUITT:

15 Q Mr. Ashford, how old are you?

16 A 59.

17 Q All right. And did you just -- I'm going to
18 lead a little bit trying to get past.

19 THE COURT: Okay.

20 MR. TRUITT: We kind of agree on basic things.

21 Q On October 30th, 2013 did you have an
22 injury at work?

23 A Yes, I did.

24 Q Okay. Just tell Commissioner Campbell how
25 you hurt your hand.

1 A Well, it's called a payoff and a take-up on
2 the re-wind line is what we call it. And I thought I
3 had cut the line off, so I went to retrieve my
4 paperwork out so I could see where my cut point on my
5 cable was. And I reached in to get my paperwork out
6 the cable, the line started back up. It grabbed my
7 hand and it put me on my knees and I had to straddle
8 my body over the cable, which I got a scar on my leg,
9 my knee and my stomach. And I had to put my left foot
10 on the -- on the reel itself in order to keep from
11 breaking my hand off. And I sat there for maybe about
12 five to eight minutes waiting on somebody to come and
13 stop the line, because I didn't have an e-stop button
14 on either side of the line that I could reach.

15 Q All right. So your -- so your hand was
16 basically caught in the machine?

17 A It was caught in the machine. It was wedged
18 between the shaft and the reel itself.

19 Q Did somebody come and eventually get you out
20 of it?

21 A Yes.

22 Q And you said it was five to eight minutes?

23 A Service operator came and got me out.

24 Q All right. Tell Commissioner Campbell
25 what's -- what problems, what symptoms were you having

1 immediately following your hand getting stuck in the
2 machine?

3 A Numbness in my -- in my ring finger, my
4 little finger and my wrist. And sharp pains right
5 here. And then I have sharp pains going down in my
6 elbow now.

7 Q Okay. All right. And those symptoms that
8 you had following this accident, do you still have
9 them today?

10 A I still have them today.

11 Q Have they changed at all?

12 A None.

13 Q Okay. What problems does it cause you?
14 Other than the pain, what problems does it cause you?

15 A I can't sleep at night. I'm up at least
16 three or four nights out the week. I'm taking all
17 kinds of medications to help me sleep, to help for the
18 pain. I mean, it's just nerve-racking.

19 Q Okay. And this is still the symptoms you're
20 having even after the surgery that Dr. Fulton did?

21 A Yes.

22 Q Okay. Did you tell Dr. Fulton you were
23 still having problems?

24 A Yes.

25 Q Okay. Did you ask Dr. Fulton for a second

1 opinion?

2 A Yes, I did.

3 Q As a result of asking him for a second
4 opinion did you get a second opinion?

5 A No.

6 Q Okay. Have you been to other doctors to try
7 to -- to try to get treatment to see what was wrong?

8 A I went to Dr. Patel and Dr. Gaber.

9 Q Okay. Did -- did they want -- as a result
10 of seeing them did they want to see you back further?

11 A Yes, both of them did.

12 Q Okay. And did both of them request an EMG
13 Nerve Conduction Study?

14 A Dr. Patel did.

15 Q Okay. As well as Dr. Gaber?

16 A Yes.

17 Q Okay. All right. And have you had the EMG
18 Nerve Conduction Study done since Dr. Fulton released
19 you?

20 A Yes, I had -- I had it done.

21 Q Okay. All right. Have you been able to go
22 back to any doctor to have that doctor interpret the
23 EMG Nerve Conduction Study Report?

24 A No, I haven't.

25 Q Okay. And are you asking -- asking

1 Commissioner Campbell for him to order that you be
2 allowed to go see a doctor to figure out what's going
3 on with your hand?

4 A Yes, I would love that.

5 Q And to see what the EMG Nerve Conduction
6 Study results mean?

7 A Yes.

8 Q Is that correct?

9 A Yes.

10 Q Do you want to go back to Dr. Fulton, or do
11 you want to go to another doctor?

12 A I would rather go to Dr. Patel.

13 Q Okay. All right. Briefly -- well, tell me
14 this, the way your hand and wrist is now, is it -- are
15 you in a position to go back to your old job?

16 A There is no way that I can go back.

17 Q Why not?

18 A Because of my job duties. It takes a lot of
19 pushing, pulling. The reels that weigh over -- well
20 over 5,000 pounds. And I -- and there's no way that I
21 can push or pull those reels.

22 Q Okay. Did you try to go back to work once
23 Dr. Fulton released you?

24 A Yes, I did.

25 Q Were you able to do it?

1 A I went back and then they gave me -- I was
2 under a new manager, and what he did, he tried to tell
3 me to go and move some bobbins and some yarns, and I
4 did the best I could. And what it did was irritate my
5 hand again, so I had to take some more time off.

6 Q Okay. And how many days did you attempt to
7 go back to work after you were released by Dr. Fulton?

8 A I was back for two weeks, but it was that
9 Friday after the first week I had to take that Friday
10 and that Monday off.

11 Q Okay. So how many days did you work total,
12 do you think?

13 A I worked probably for eight -- eight days.

14 Q All right. And why did you not work more
15 than eight days?

16 A Well, I had to go out for my foot.

17 Q Okay.

18 A I had to go and get a cast put on my foot.

19 Q And those eight days of work, were you going
20 to be able to keep doing that based on the way your
21 hand was doing?

22 A No way.

23 Q Okay. How long have you been doing that
24 type of job, that job you have now?

25 A For 26 years.

1 Q 26 years, okay. Does it require use of your
2 right arm?

3 A Yes.

4 Q Okay. Prior to this accident in 2013 did
5 you have any symptoms in your right wrist, right hand
6 of anything?

7 A None whatsoever.

8 Q Okay. Was it perfectly normal?

9 A Perfectly normal.

10 Q Did you have any numbness in your right hand
11 before this?

12 A No.

13 Q Any kind of pain in your wrist before this
14 accident?

15 A No.

16 Q Okay. So since this accident, this crush
17 injury in October 2013, you've had these continuous
18 problems?

19 A Yes, I've been --

20 MR. HAIGLER: Object to leading.

21 THE COURT: Please rephrase.

22 Q What -- what problems have you had, if any,
23 since this accident in 2013, October?

24 A Just the problems with my hand.

25 Q Okay. And wrist?

1 A And my -- yeah.

2 Q All right. What about -- what about your
3 psychological condition, or your mental state? How is
4 that now?

5 A I'm coping with it. I'm trying -- I have
6 bad dreams. I can't sleep. I mean I'm very nervous.
7 I'm nervous sitting up here now. I mean, you know,
8 it's just -- because I have never been in this
9 position. And I've always been a workaholic. And I
10 have always done my job. I mean it took me, out of
11 the 26 years, and after five years I was a supervisor.
12 So I mean, that's the position I'm used to being in.

13 Q Okay. What kind of bad dreams are you
14 having?

15 A Actually, I had a nightmare the other night
16 where I was pulling a reel and I slipped and the reel
17 crushed me.

18 Q Okay. So you're having -- you're having
19 nightmares about the incident?

20 A Yes.

21 Q Okay. Are you concerned at all about being
22 able to go back to work?

23 A Yes.

24 Q Do you want to go back to work?

25 A Yes.

1 Q All right.

2 A I do want to go back to work, but as far as
3 doing the job my hand has to get better.

4 Q Right. All right. So do you want
5 Commissioner Campbell to order that you get some
6 psychological treatment as well, based on this
7 accident?

8 A Yes.

9 Q All right. Now, as far as this most recent
10 EMG Nerve Conduction Study that you had done, did you
11 get that done with your health insurance, or did
12 Workers' Comp authorize that?

13 A Workers' Comp.

14 Q All right. Has Workers' Comp authorized you
15 to go see any doctor since the EMG Nerve Conduction
16 Study?

17 A No.

18 Q Okay. And you're asking Commissioner
19 Campbell to order that you be allowed to go see a
20 doctor to get the results of the EMG Nerve Conduction
21 Study?

22 A Yes.

23 Q Okay. Now, as far as health issues, you
24 have -- you have diabetes; is that right?

25 A Yes.

1 Q Okay. How long have you had diabetes?

2 A Since I was 40 years old.

3 Q 40?

4 A So that's 19 years.

5 Q Okay. All right. Then the foot problem
6 that you have now is a result of your diabetes and
7 your neuropathy for your foot; is that right?

8 A Yes.

9 Q All right. And you were out of work for how
10 long for your foot?

11 A I was out since -- I think that was June 1st
12 of 2014.

13 Q And you're still out for your foot?

14 A Yes.

15 Q Okay. All right. But as far as your right
16 wrist and right hand, you never had any problems with
17 that until the crush injury in October of 2013?

18 A Yes.

19 Q That's all the questions I have. Please
20 answer any questions Mr. Haigler may have.

21 THE COURT: Thank you, Mr. Truitt. Mr. Haigler.

22 MR. HAIGLER: Thank you, Commissioner.

23 CROSS EXAMINATION

24 BY MR. HAIGLER:

25 Q Did you ever -- your testimony is you never

1 got any better after that surgery; is that right?

2 A No. And I told Dr. Fulton that it was no
3 better.

4 Q You told him that?

5 A Yes, I did.

6 Q From day one?

7 A Yes.

8 Q Okay. Have you read your medical records
9 that Dr. Fulton provided? Have you read those in
10 preparation for this hearing, or just general?

11 A He said -- I think he said that I was able
12 to go back to work a hundred percent.

13 Q Did you read his records regarding whether
14 you had any improvement from that surgery?

15 A That's what he said I did.

16 Q He said you had a --

17 A He said I was a hundred percent.

18 Q Okay. So when he -- when he reported on
19 December the 14th --

20 MR. HAIGLER: Commissioner, I'm on APA, page 64.

21 THE COURT: Thank you.

22 Q -- when Dr. Fulton reported that you said
23 your pain is minimal, that you have minimal swelling
24 and you have near full range of motion of your wrist,
25 are you saying you never told Dr. Fulton that on --

1 A No, I didn't.

2 Q -- you didn't tell him that on December 12th
3 of 2014?

4 A No, I didn't.

5 Q Okay. And then you never told him on
6 December -- excuse me -- January -- I assume you never
7 told him on January the 16th -- bear with me -- that
8 quote -- he said this that "He feels like he's doing
9 well." Did you ever tell him that?

10 A No, I didn't.

11 Q You never made that comment to Dr. Fulton?

12 A No, I didn't. My wife can be a witness to
13 that, because I had her with me during that time.

14 Q But you agree that on February the 13th he
15 released you at "MMI, with an impairment rating and to
16 go back to work with no restrictions." You agree with
17 that; do you not?

18 A No, I did not.

19 Q No, I mean he -- that Dr. Fulton did that?
20 You agree that he did that on February --

21 A Oh, yes.

22 Q Okay. You understand that question?

23 A Yeah.

24 Q Okay. Would you also agree that on February
25 the 13th, 2015 was the very first time you ever told

1 him that you were not getting improvement from this
2 surgery?

3 A No, I told him right after the surgery,
4 after he put me in a cast and I told him that I wasn't
5 getting any better.

6 Q Okay. Now, you remember the conversation
7 with Dr. Fulton about your diabetes? Do you remember
8 talking to him about that on that February visit?

9 A He said -- well, that was the last day that
10 I saw him. After he released me he said something
11 about neuropathy.

12 Q Okay. Did you -- did you know what
13 neuropathy was at that point in time?

14 A It had something to do with your nerves.

15 Q How do you know that?

16 A Because my doctor told me about it.

17 Q Which doctor?

18 A Dr. Rojas.

19 Q From your prior neuropathy issue?

20 A Yes.

21 Q In fact, you've had neuropathy since 2006,
22 have you not?

23 A I can't tell you that. I mean I haven't had
24 any problems out of my feet or anything.

25 Q Okay. You have had problems out of your

1 feet?

2 A No, until -- until I broke my foot.

3 Q Okay. So if you were diagnosed --

4 MR. HAIGLER: And I'm on page 50 of the
5 Defendant's APA, Commissioner.

6 THE COURT: Thank you.

7 Q -- you were diagnosed on March 16th of 2006
8 with peripheral neuropathy in your foot, you would
9 disagree with that?

10 A Yes. I mean it wasn't explained to me that
11 way.

12 Q Okay. I got you. Now you just testified
13 that you knew about peripheral neuropathy, or
14 neuropathy in general, nerve damage, because of what
15 Dr. Moran told you, your foot doctor; is that what
16 you're saying?

17 A He didn't actually say neuropathy. I mean
18 he never told me neuropathy. He said nerve damage.
19 Because I didn't know what neuropathy was.

20 Q When did you first learn what neuropathy
21 was?

22 A Well, my wife is -- she works for Blue Cross
23 and what she does is look up a lot of the things,
24 because I didn't know until after Dr. Fulton told me.
25 And me and my wife we actually looked it up and found

1 out what it was. That's how I knew it was nerve
2 damage.

3 Q Are you aware that -- let me ask you this
4 question. On -- I'm reading your report dated
5 February -- let me ask this first. Do you agree that
6 your foot issues have nothing to do with this Workers'
7 Comp claim?

8 A Yes.

9 Q Okay.

10 MR. HAIGLER: Commissioner, I'm on page 46-47,
11 Defendants' APAs.

12 Q You saw Dr. Moran, who's your foot doctor,
13 on February 21st, 2014. According to the history of
14 present illness, which is what you tell the doctor,
15 you were a diabetic with peripheral neuropathy. Did
16 you tell him that?

17 A No, I didn't tell him that.

18 Q And I'm reading the last sentence on that
19 report where the doctor says that he "Explained to
20 James" -- you're James, correct?

21 A Yes.

22 Q -- "that his neuropathy could cause
23 neuropathic arthropathy." Did you know that?

24 A He didn't use the word neuropathy. If he
25 did -- I mean if he said that, he didn't use the word

1 neuropathy, that I can remember.

2 Q Okay. And you didn't -- so you're disputing
3 that he told you that you had neuropathy,
4 "neuropathy?"

5 A Dr. Moran?

6 Q Correct.

7 A No, I didn't dispute him on anything.

8 Q No, my point was that you're saying that he
9 didn't actually -- even though he says he explained
10 that you had neuropathy, you're telling us here today
11 that he didn't say -- actually use the word
12 neuropathy; is that what you're saying?

13 A No. I don't recall him using the word
14 neuropathy.

15 Q Now, I've submitted to the Commissioner,
16 well 50 -- almost 50 pages -- over 50 pages of records
17 -- or exactly 50 pages of records from Dr. Moran. Are
18 you aware that since 2006 you've had a running
19 diagnosis of peripheral neuropathy?

20 A No.

21 Q Up until April of this year, just a couple
22 of months ago? Are you aware of that?

23 A No.

24 Q So you deny having any knowledge of that?

25 A I don't have any knowledge of it.

1 Q You didn't know that you were diagnosed and
2 you had an ongoing ten year condition of diabetic
3 peripheral neuropathy disorder? You weren't aware of
4 that?

5 A No, I wasn't.

6 MR. TRIUTT: Mr. Haigler, can you tell me where
7 the dates are on the record?

8 THE COURT: I'm sorry. What page are you
9 referring to?

10 MR. HAIGLER: I'm on every -- all 50 pages --

11 THE COURT: Okay. I didn't know if --

12 MR. HAIGLER: No, I was just showing him in
13 general where the page -- where the pages are.

14 THE COURT: I've got you.

15 MR. TRUITT: Have you got the one for 2006?

16 MR. HAIGLER: Yes, it should be the very last
17 page. I'm at page 50.

18 MR. TRUITT: Okay.

19 THE COURT: What page is that?

20 MR. HAIGLER: 50.

21 MR. TRUITT: Okay. I've got it.

22 THE COURT: Thank you. And I know you were just
23 showing him the stuff.

24 MR. HAIGLER: No, that's fine.

25 BY MR. HAIGLER:

1 Q So let me be clear. So when Dr. Fulton
2 asked you the last time you saw him when you were
3 telling him about your condition, he started asking
4 you about your diabetes, did he not?

5 A No, he didn't ask me. He just told me that
6 I had neuropathy.

7 Q Okay. Which you do?

8 A I understand.

9 Q Is that a yes?

10 A Yes.

11 Q And did he -- he was asking you --

12 MR. HAIGLER: And I'm reading his report,
13 Commissioner, page 54.

14 Q -- he says that when you -- when he asked
15 you about how long you had diabetes you told him that
16 you didn't want to answer the question because it
17 wasn't pertinent to the problem with your hand which
18 was numbness and tingling at the ring and small
19 finger. Did you tell -- did you tell him you didn't
20 want to answer his question?

21 A Yes.

22 Q Okay. Now, are you aware, Mr. Ashford, that
23 when I deposed you I asked you that very question. I
24 asked you specifically --

25 MR. HAIGLER: And, Commissioner, I'm going to

1 give you the deposition transcript.

2 Q Mr. Ashford, I just asked you and you just
3 testified that you do -- did, in fact, tell Dr. Fulton
4 that you didn't want to discuss your diabetic history
5 because you didn't think it was relevant. Now, when I
6 deposed you on March 26th, which would have been about
7 a month and a half after that appointment --

8 MR. HAIGLER: Page 40, Commissioner, lines 17
9 through 21.

10 Q -- I specifically asked you, "When he asked
11 you how long you had had diabetes, you didn't want to
12 talk about it; is that true?" And you said, no, that
13 you didn't say that to him. Now can you explain to
14 the Commissioner why your testimony today regarding
15 what you told Dr. Fulton is not the same as what you
16 told me in your deposition three months ago?

17 A Could you repeat the question?

18 Q Sure. I'd be glad to.

19 MR. HAIGLER: I'll be glad to repeat it,
20 Commissioner.

21 A I can't see it. I mean I need my glasses.

22 Q Did you bring them?

23 A No.

24 MR. HAIGLER: You could read it to him.

25 MR. TRUITT: Or you could. You can just read it

1 to him line by line.

2 BY MR. HAIGLER:

3 Q Now let me go back and tell you what -- let
4 me ask you this question again, make sure you
5 understand it.

6 MR. HAIGLER: May I approach? I'm sorry, my
7 apologies.

8 THE COURT: Absolutely.

9 Q I asked you just a second ago whether you
10 admitted to telling Dr. Fulton that you didn't want to
11 talk about your diabetes. That was my question. And
12 you said yes, I didn't want to talk about it. Did you
13 not just say that?

14 A I didn't tell him that, but I didn't want to
15 talk about it.

16 Q So you're saying you didn't tell him that?

17 A Yeah, -- no, I didn't tell him that.

18 Q But you didn't want to talk about it?

19 A No, I didn't.

20 Q Did you talk to him about it?

21 A He asked me how long have I had diabetes,
22 and I said since I was 59 -- I mean since I was 40.

23 Q Okay. So his report -- but his report says
24 you didn't want to give him that information?

25 A I did tell him since I was 40. My wife was

1 in there.

2 Q Okay. So when his report says that you
3 didn't want to talk about it because it wasn't, in
4 your opinion, relevant to your hand injury; that's not
5 true; that's not what you said?

6 A I told him -- I told him that I had it since
7 I was 40 years old.

8 Q Okay. Did you tell him that that wasn't
9 relevant to your hand injury?

10 A No, I didn't.

11 Q Okay. So you dispute that? Are you
12 disputing what's in his report?

13 A Yeah.

14 Q Have you seen his report?

15 A No.

16 Q But you -- let me -- let make sure I'm
17 clear.

18 A You may have asked me and I may have
19 misinterpreted what you were saying, but he asked me and
20 I told him since I was 40 years old that I had
21 diabetes. And if I'm not mistaken I think that I
22 answered that question when I first started going to
23 Dr. Fulton.

24 Q Okay. Let me make sure I'm clear. You --
25 you're denying Dr. Fulton's report that you told him

1 that whether you had diabetes or how long you've had
2 diabetes, you are denying that you told him that was
3 irrelevant to your hand injury?

4 A Yes, I am.

5 Q So you're saying he lied in this report; is
6 that what you're saying?

7 MR. TRUITT: Objection.

8 THE COURT: Sustained.

9 Q Let me ask you this question, Mr. Ashford.
10 If you've had a ten year history of neuropathy, why
11 would you tell him it couldn't -- that wasn't relevant
12 to your current hand problems?

13 A I didn't know about neuropathy until Dr.
14 Fulton said something to me about neuropathy.

15 Q Even though it's in every one of your
16 records; is that what you're saying?

17 A Even though it's in all of my records, they
18 never explained it to me in that term.

19 Q Okay. All right. Fair enough. Now, you
20 testified earlier that you tried to go back to work
21 but you were having problems after you were released,
22 correct?

23 A Yes.

24 Q But that's not the reason you left work, is
25 it?

1 A Because they put me on a job that I couldn't
2 handle. And when I tried --

3 Q No. Your hand is not the reason you left
4 work, correct?

5 A Yes, it was.

6 Q Okay. I thought the reason you left work, I
7 think you made that pretty clear later, that the
8 reason you actually stopped working after you went
9 back to work, is because you had to go out of work for
10 your foot; is that not true?

11 A I had -- I left work on a Friday and I took
12 off that Monday because of my hand. And I called in
13 for that reason.

14 Q Now, have you provided your employer with
15 any note from a doctor saying you cannot work?

16 A No, I haven't.

17 Q Okay. Do you have anything from a doctor
18 since Fulton released you in February that says you
19 cannot work?

20 A No, I don't.

21 Q Okay. Do you have anything or do you
22 understand that Dr. Fulton has said that you are at
23 maximum medical improvement? Do you understand that?

24 A Yes.

25 Q Okay. Do you have anything from a doctor

1 that says you are not at maximum medical improvement?

2 A No, I don't.

3 Q Okay. You understand that Dr. Fulton does
4 not believe that you have restrictions on your ability
5 to go to work? Do you understand that? That Dr.
6 Fulton has released you with no restrictions?

7 A No restrictions whatsoever.

8 Q Do you understand that?

9 A Yes.

10 Q Okay. Do you have anything from a doctor
11 that's contrary to that?

12 A No.

13 Q Okay. Now, did Dr. Fulton indicate you
14 needed any further medical treatment? Did he talk
15 about that with you?

16 A No.

17 Q Okay. So if his report says you don't --
18 that you don't need any medical treatment -- are you
19 aware that his report says you don't need medical
20 treatment?

21 A Yes.

22 Q Okay. Now, do you have anything from a
23 doctor that says you need additional medical
24 treatment?

25 A I went to Dr. Patel and he said that I would

1 -- I would need more treatment, and Dr. Gaber.

2 Q Is that -- do you have that in writing
3 anywhere?

4 MR. HAIGER: Commissioner, I would respectfully
5 ask that Chip refrain from nodding the answers to his
6 client.

7 THE COURT: Okay. All right. Thank you.

8 Q Do you have anything from a doctor that says
9 that you need more medical treatment, a piece of
10 paper?

11 A I haven't seen the notes on it.

12 Q Okay.

13 A But he told me -- Dr. Patel told me
14 personally that I needed more care. I haven't seen
15 the notes. I can tell you that.

16 Q Fair enough. Do you have any kind of
17 document where a doctor says to a reasonable degree of
18 medical certainty that you -- that additional medical
19 treatment is going to tend to lessen your period of
20 disability? Do you have any such document?

21 A No.

22 Q Would you agree -- and I'm not asking
23 whether you agree whether you did or not, but would
24 you agree based on Dr. Fulton's records that you did
25 have improvement after this surgery?

1 A No.

2 Q You don't agree with -- you don't even agree
3 with what the record say?

4 A I haven't had any relief from my hand.

5 Q Okay. Now, have you seen the report from
6 your EMG that you had a few weeks ago?

7 A I've seen it, but I can't -- I mean I don't
8 understand it. I know it's just abnormal.

9 Q Are you aware that it lists as one of the
10 possibilities for your condition as peripheral
11 neuropathy, diabetic neuropathy?

12 A It was a possibility.

13 Q Okay. It also says -- everything on there
14 is a possibility, isn't it?

15 A Right.

16 Q So nothing is -- nothing is more than a
17 possibility on there; is that -- is that your
18 understanding?

19 A That's correct.

20 Q You read the report?

21 A Yes.

22 Q Are you aware that your initial EMG that you
23 had even before you had surgery from Dr. -- when Dr.
24 Constable saw you, it also showed that you could have
25 neuropathy? Are you aware of that?

1 A No, I wasn't aware of that.

2 Q No one ever told you that?

3 A No. The first time I heard it was from Dr.
4 Fulton.

5 Q So if your own foot doctor says that he told
6 you personally that you had neuropathy, are you saying
7 you don't believe that report either?

8 A I'm saying he didn't say neuropathy.

9 Q If he says he did, are you saying that's
10 untrue?

11 A Well, I can't recall. I mean I don't recall
12 him telling me that I had neuropathy.

13 Q Here is the reason I'm asking. When I asked
14 you what's in -- whether you agree with what's in Dr.
15 Fulton's report, you were pretty adamant that you
16 didn't say these things; that none of this happened
17 that's in that report. When he says you got
18 improvement, you are pretty sure -- you're saying that
19 ain't true. When he's saying that you told him you
20 weren't going to answer his questions, you're saying
21 that's not true?

22 A I have never said I wasn't going to answer
23 his questions.

24 Q That's my point. That's my point.

25 A And I complained to him from --

1 Q Let me finish my question.

2 MR. TRUITT: Let him answer.

3 MR. HAIGLER: Well, I haven't asked the question
4 yet.

5 MR. TRUITT: He can explain.

6 MR. HAIGLER: I haven't asked my question yet.

7 MR. TRUITT: Objection. Let the witness --

8 THE COURT: Allow him to answer and then I'll let
9 you ask the question.

10 A I complained to Dr. Fulton from day one
11 about my hand. And the first thing -- and after the
12 surgery I complained to him about it.

13 Q About what?

14 A About my hand. About my numbness, tingling
15 and the pain that I was having.

16 Q But yet when he tried to ask you about your
17 diabetes to determine whether maybe you have diabetic
18 neuropathy that's causing that problem, you weren't
19 interested in helping him out with that, were you; yes
20 or no?

21 A I would have answered any question he asked
22 me.

23 Q My point to you earlier was, you agree
24 though that his report says you weren't going to
25 answer his questions. Do you agree with that?

1 A No, I don't.

2 Q I'm asking you do you agree that his report
3 says that? I'm not agreeing -- I'm not saying do you
4 agree that you didn't want to answer his question.
5 I'm just saying are you agreeing with what the report
6 says; that it actually says this on here?

7 A I haven't seen the report.

8 Q And you can't read it?

9 A I can't.

10 Q Well, I guess my point to you earlier was,
11 Mr. Ashford, you're pretty clear that you don't agree
12 that the things I've mentioned to you that Dr. Fulton
13 wrote down you've got a real problem with, correct?

14 A No.

15 Q You don't agree with what -- you're saying
16 that he's mischaracterized what you told him? Are you
17 agreeing with that?

18 A What I'm saying is I don't understand why he
19 would put something in there like that, because it's
20 not true.

21 Q Okay. That's my point. Yet, when Dr.
22 Moran, who is your personal foot doctor comments that
23 he told you you had neuropathy, you just excuse that
24 as I don't know if that's true or not?

25 A No, he didn't explain to me that it was

1 neuropathy.

2 Q You never told Dr. Gaber about your prior
3 neuropathy, did you?

4 A No.

5 Q You never told Dr. Patel about your prior
6 neuropathy, did you?

7 A No.

8 Q Now, they took a medical history from you;
9 did they not, because it's in their reports?

10 A Yes.

11 Q Why did you not tell them that you've had a
12 ten year history of neuropathy if you already knew it
13 from Dr. Fulton?

14 A Didn't ask.

15 Q They asked you about your medical history;
16 did they not?

17 A They didn't ask me about neuropathy.

18 Q What did they ask you?

19 A They asked me about my hand, the condition
20 of my hand.

21 Q My question to you was, did they ask you
22 about whether you had diabetes, whether you had these
23 other conditions? They asked you about your medical
24 history in general; did they not?

25 A Yes, I told them I had diabetes. I mean

1 they didn't ask me about neuropathy.

2 Q Did they ask you whether you had diabetes?

3 A Yes, they did.

4 Q Okay. Why didn't you tell them -- did they
5 ask -- what else --

6 A It didn't even come to mind to tell them I
7 had neuropathy.

8 Q Even though Dr. Fulton had just gone through
9 that with you?

10 A My main concern -- my main concern was to
11 get my hand better.

12 Q Okay, fair enough. Now, you were out -- and
13 I think we went through this earlier, but you went out
14 of work for a period in March because of your right
15 foot, correct? You were out of work for a period of
16 time because of that foot; is that right?

17 A Yes.

18 Q Okay. And you have not been back at work
19 since then; is that correct?

20 A Yes.

21 Q Is that correct?

22 A That's correct.

23 Q Okay. Is there a reason why you have not
24 gone to a doctor to get him to write you out of work
25 or do any of that; is there any reason for that? Can

1 you explain why you have not gone to a doctor and say
2 doctor write me out of work for my hand? Can you
3 explain why that has not occurred?

4 A Well, when I went to Dr. Patel and Gaber,
5 both -- they said they had to clear it through
6 Workmen's Comp.

7 Q Okay. Did Workmen's Comp pay for those
8 appointments?

9 A No, I paid for them.

10 Q Well, then why would they have to clear it
11 through Workers' Comp?

12 A They had nothing to do with the case until
13 Workmen's Comp cleared it.

14 Q What does that have to do with you getting a
15 note regarding your ability to work?

16 A I didn't ask for a note, because I was
17 already out with my foot.

18 Q Okay. So you didn't even ask them for a
19 note, correct?

20 A No, I didn't.

21 Q Okay, fair enough. Let me ask you a little
22 bit -- and, again, I'm still maintaining my objection
23 to this psychological evidence. You saw a Todd
24 Hanson?

25 A Yes, I did.

1 Q Okay. Do you know what kind of person Todd
2 Hanson is, what he does?

3 A I thought he was a trauma doctor.

4 Q Okay. Are you -- did you think he was a
5 psychologist or psychiatrist, or what did you think he
6 was?

7 A I thought -- yes.

8 Q Okay. Are you aware he's neither of those?

9 A No, I didn't know.

10 Q Are you aware he is actually a marriage and
11 family therapist?

12 A No, I didn't know.

13 Q Now I'm reading the first time you saw him
14 --

15 MR. HAIGLER: And I'm on page 121, Commissioner,
16 of the Claimant's second supplemental APA.

17 THE COURT: Okay.

18 Q There's a very long history of what you told
19 him about all the problems you were having and the
20 stress you were having relating to work and things of
21 that nature. Would you agree you never once told him
22 about your foot problem; that you were actually out of
23 work when you saw him because of your foot?

24 A Yes, I did tell him about my foot problem.

25 Q You did?

1 A Yeah, because I went there with a cast on
2 it.

3 Q Okay. Now are you -- can you explain why in
4 the first report --

5 MR. TRUITT: Objection.

6 MR. HAIGLER: Objection to what?

7 MR. TRUITT: To asking him to explain why a
8 doctor did or didn't put something in the record. He
9 has no idea, if that's what you were going to ask.
10 Objection to it's speculative.

11 MR. HAIGLER: Okay.

12 BY MR. HAIGLER:

13 Q Are you aware that your foot is never
14 mentioned in his first report?

15 A No.

16 Q You're not aware of that?

17 A No, I'm not aware of it.

18 Q But you're saying you told him?

19 A I mean it was clear. I had my cast on my
20 foot.

21 Q But that wasn't my question. My question to
22 you was, did you tell him about your foot injury?

23 A Yes, I did.

24 MR. HAIGLER: One second, Commissioner.

25 Q I'm reading the -- now you saw him -- you

1 may not know this --

2 MR. HAIGLER: This is page 119 of the Claimant's
3 APA, Commissioner.

4 Q You saw him on April the 7th and you told
5 him -- of course I'm reading -- according to his
6 report you told him that you were denied a second
7 opinion that you were seeking regarding an injury; is
8 that right?

9 A Yes.

10 Q Did you tell him that you had actually had
11 two second opinions by this time? Because you
12 actually saw Dr. Gaber and Dr. Patel before this
13 appointment. Did you tell him that you actually had
14 those opinions?

15 A It was a second opinion, but it was not a
16 full second opinion. I mean as far as the Nerve Study
17 -- the Nerve Study was going to be a second opinion.

18 Q But the Nerve Study is just a test. You
19 wanted a second opinion from a doctor; did you not?

20 A Yes.

21 Q Okay. And you've had that; have you not?

22 A That would -- the Nerve Study would
23 determine that.

24 Q Okay. And what did -- and as you've read
25 the Nerve Study, the Nerve Study only determined that

1 things were possible; is that right?

2 A That's what it says.

3 Q All right. Now, you also testified here
4 that you're asking the Commissioner to give you
5 additional medical treatment or additional
6 psychological treatment. Did you not testify to that
7 earlier?

8 A Yes.

9 Q Now, I don't know if you know this or not,
10 but your own expert -- and I use that in quotes -- on
11 page 117 and 118 --

12 MR. HAIGLER: And specifically Number 4 on page
13 117, Commissioner.

14 Q -- are you aware that your own "expert" Mr.
15 Hanson, the family therapist has said you don't need
16 any more treatment?

17 A No, he didn't tell me that.

18 Q I'm not asking whether he told you that.
19 I'm asking whether you know he's filled out a
20 questionnaire that says you don't even need more
21 treatment?

22 A No, I'm not aware of that.

23 Q Are you aware that he's filled out a
24 questionnaire that says you're at maximum medical
25 improvement?

1 A No, I'm not aware of that.

2 Q You didn't know that before you sat down
3 today?

4 A No. What he told me was that after I went
5 back to work then I can come back and get
6 re-evaluated.

7 Q Let me just make sure I'm clear on something
8 though. As far as your ability to go to work, the
9 only doctor who's given you an opinion on that is Dr.
10 Fulton, and he said you could go back to work; is that
11 true?

12 A Yes.

13 Q Thank you, sir.

14 REDIRECT EXAMINATION

15 BY MR. TRUITT:

16 Q All right. Mr. Ashford, I think we went
17 over this maybe 30 times on cross, but I'm going to
18 ask you anyway. You did not ask for a work excuse
19 from Dr. Patel or Dr. Gaber because of what?

20 A My foot injury.

21 Q Okay. And what does that mean, your foot
22 injury?

23 A Well, it means my foot was bad and I was out
24 of work already.

25 Q For your foot injury?

1 A Right.

2 Q Okay. All right. So there was no reason to
3 ask him for a work excuse?

4 A No.

5 Q Okay. And did you tell both Dr. Gaber and
6 Dr. Patel that you had diabetes?

7 A Yes.

8 Q Okay. Did -- at any point did your foot
9 come up in conversation with Dr. Gaber or Dr. Patel?

10 A If I can recall, I think Dr. Patel said
11 well, how about your foot. I told him it was getting
12 better.

13 Q Okay. All right. The -- did you tell Dr.
14 Gaber and Dr. Patel that your right hand and right
15 wrist was perfectly okay before the crush injury?

16 A Yes.

17 Q All right. And as a result of the crush
18 injury and the surgery, did you tell him them that it
19 was still not well?

20 A I told them it was the same about after the
21 injury. Nothing changed.

22 Q And both Dr. Gaber and Dr. Patel requested
23 EMG Nerve Conduction Studies?

24 A Yes.

25 Q All right. And the Nerve Conduction Study

1 -- the EMG Nerve Conduction Study was authorized by
2 the Workers' Comp carrier and performed on June 3rd,
3 2015?

4 A I think that's correct.

5 Q So less than three weeks ago it was
6 performed?

7 A Yes.

8 Q And you just became aware when the report
9 just came in recently that it was abnormal?

10 A Yes.

11 Q Okay. Which verifies what you were telling
12 Dr. Fulton, that your hand wasn't feeling normal?

13 A Yes.

14 Q So this report backs up what you were
15 telling Dr. Fulton?

16 MR. HAIGLER: I'm going to object to leading.

17 Q Is that a yes?

18 A Yes.

19 Q All right. And so you're asking
20 Commissioner Campbell to get you evaluated by a hand
21 specialist to see why the EMG Nerve Conduction Study
22 report is abnormal, the most recent one you had?

23 A Right.

24 Q Has -- to your knowledge has the Workers'
25 Comp carrier approved you to go see another

1 orthopedist to get evaluated with the EMG Nerve
2 Conduction Study?

3 A No.

4 MR. TRUITT: That's all the questions I have.

5 THE COURT: Mr. Haigler, anything more?

6 MR. HAIGLER: I think I've just got one
7 follow-up, Commissioner.

8 RE-CROSS EXAMINATION

9 BY MR. HAIGLER:

10 Q You mentioned earlier that Dr. -- that you
11 didn't talk to Dr. Patel or Dr. Gaber about your foot
12 -- about getting a work excuse for your hand because
13 you were already out of work for your foot?

14 A Right.

15 Q Why didn't you go back to see them after you
16 had to go back to work -- after you were released for
17 your foot, why didn't you go see them to get an
18 excuse?

19 A I'm not released for my foot?

20 Q Oh, you still are?

21 A Yeah. I'm still out.

22 Q So the only reason you're not working right
23 now according to a doctor is because of your foot,
24 correct?

25 A Because of my foot and my hand, actually.

1 Q Okay. Which doctor has taken you out for
2 your hand?

3 A None. I'm trying to get y'all to approve
4 it.

5 Q Thank you, sir.

6 THE COURT: Is there anything more?

7 MR. TRUITT: No. That's our case. Thank you,
8 Commissioner.

9 THE COURT: There being nothing further that
10 concludes this proceeding.

11 (The hearing concluded at 4:09 p.m.)
12
13

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)

CERTIFICATE

BE IT KNOWN THAT I TOOK THE FOREGOING
 WORKERS' COMPENSATION HEARING;

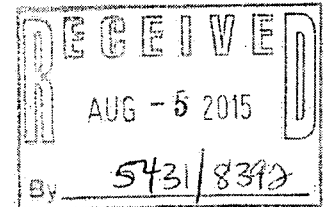
THAT I WAS THEN AND THERE A NOTARY PUBLIC IN
 AND FOR THE STATE OF SOUTH CAROLINA-AT-LARGE;

THE FOREGOING TRANSCRIPT CONSISTING OF 57
 TYPEWRITTEN PAGES REPRESENTS A TRUE, ACCURATE AND
 COMPLETE TRANSCRIPTION OF THE TESTIMONY SO GIVEN AT
 THE TIME AND PLACE AFORESAID TO THE BEST OF MY SKILL
 AND ABILITY;

THAT I AM NOT RELATED TO NOR AN EMPLOYEE OF
 ANY OF THE PARTIES HERETO, NOR A RELATIVE OR EMPLOYEE
 OF ANY ATTORNEY OR COUNSEL EMPLOYED BY THE PARTIES
 HERETO, NOR INTERESTED IN THE OUTCOME OF THIS ACTION.

WITNESS MY HAND AND SEAL THIS 18TH DAY OF MARCH,
 2016.

CORA ELLIS BRUTON
 NOTARY PUBLIC FOR SOUTH CAROLINA
 MY COMMISSION EXPIRES DECEMBER 31, 2024



1 State of South Carolina
2 Before the
3 South Carolina Workers' Compensation
4 Commission
5 WCC File No.: 1318928

SCANNED

6 James Ashford,)
7 Employee,)
8 Claimant,)
9 vs.)
10 Prysmian Power)
11 Cables,)
12 Employer,)
13 and)
14 Sentry Insurance)
15 Company,)
16 Carrier,)
17 Defendants.)

Deposition of
TODD HANSON
July 27, 2015

COPY

18 Deposition on oral examination of
19 TODD HANSON, reported by Shelley Burgoyne,
20 Court Reporter and Notary Public in and for
21 the State of South Carolina; said deposition
22 taken pursuant to notice of deposition and in
23 accordance with the South Carolina Rules of
24 Civil Procedure, at Post Trauma Resources,
25 1709 Laurel Street, Columbia, South Carolina,
commencing on Monday, July 27, 2015, at the
hour of 10:02 a.m.

1 APPEARANCES

2

3 Representing the Employee/Claimant:

4 DAVID N. TRUITT, ESQUIRE

5 Truitt Law Firm

6 925 Calhoun Street

7 Columbia, South Carolina 29201

8

9 Representing the Employer/Carrier:

10 NICOLAS L. HAIGLER, ESQUIRE

11 Sowell, Gray, Stepp & Laffitte, LLC

12 1310 Gadsden Street

13 Post Office Box 11449 (29211)

14 Columbia, South Carolina 29201

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EXHIBIT INDEX

REPORTER'S NOTE: No exhibits were marked for identification.

TODD HANSON 07-27-2015

1 This deposition is taken in accordance
2 with the South Carolina Rules of Civil
3 Procedure.

4 It is agreed and stipulated by the
5 deponent and respective counsel that the
6 reading and signing of the deposition
7 transcript by the deponent is expressly
8 waived.

9 WHEREUPON:

10 TODD HANSON, being duly sworn and
11 cautioned to speak the truth, the whole truth
12 and nothing but the truth, testified as
13 follows:

14 EXAMINATION

15 BY MR. HAIGLER:

16 Q. Is it -- do you go by, Mr. --

17 A. Todd.

18 Q. Todd.

19 A. Yes.

20 Q. Is that fine?

21 A. Yes.

22 Q. Todd, my name is Nick Haigler. I
23 represent Prysmian Power Cables in
24 Mr. Ashford's workers' compensation claim. We
25 will try to be as quick as we can here today.

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1 Have you given a deposition before?

2 A. In the past, yes.

3 Q. Okay. So you are familiar with the
4 process.

5 A. Yes.

6 Q. I will not go through all of that with
7 you then, but I will always -- I always tell
8 any deponent, if I ask a question that is
9 unclear or you need me to repeat or rephrase,
10 please ask me to do that.

11 A. Uh-huh.

12 Q. You will not offend me. I need to
13 make sure you understand my questions so you
14 can answer them appropriately.

15 A. Yes.

16 Q. Fair enough?

17 A. Yes.

18 Q. All right. Before we get started, let
19 me make sure I have all of your records. I
20 always do this -- I try to do this in every
21 deposition. I have three reports from you.
22 Is that correct?

23 A. Three notes, yes.

24 Q. And a questionnaire?

25 A. Correct.

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1 Q. Okay. Is that the extent of your file
2 on this gentleman?

3 A. Yes.

4 Q. Okay. So am I correct in assuming you
5 have not seen him since April 7, 2015?

6 A. Correct.

7 Q. All right. Now, before this
8 deposition have you had any conversations with
9 his attorney?

10 A. I asked for him to fax me a copy or
11 e-mail me -- excuse me. I asked him to e-mail
12 me this questionnaire because the person who
13 sent it from here didn't make a copy.

14 Q. Oh, because you didn't have a --

15 A. That was the extent.

16 Q. You didn't have a file copy?

17 A. I did not, yes, so.

18 Q. Got you. When was that conversation?

19 A. Last week.

20 Q. Did anything else -- was anything else
21 discussed during that phone call?

22 A. No. Just for this.

23 Q. Okay. Have you had any other
24 conversations with his attorney?

25 A. I have not.

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1 Q. All right. How did you get this
2 questionnaire that you completed?

3 A. It was sent to me by -- I believe that
4 was sent by his attorney.

5 Q. It came --

6 A. Yeah.

7 Q. Okay. And that was done in June of
8 '15?

9 A. I believe so, yes.

10 Q. Around June?

11 A. Uh-huh.

12 Q. Is that a yes?

13 A. Yes. Sorry.

14 Q. Okay. And was there any conversation
15 along with it or just a questionnaire?

16 A. Just the questionnaire.

17 Q. Okay. Todd, you are not a medical
18 expert, are you?

19 A. Correct. I am not.

20 Q. You are not a licensed psychologist or
21 psychiatrist; is that correct?

22 A. Correct. Yes.

23 Q. And you did not perform any testing on
24 this gentleman --

25 A. Correct.

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1 Q. -- from a psychological standpoint.

2 A. Correct. I did not.

3 Q. And are you -- is that something you
4 are capable of doing?

5 A. I do not do psychological testing.

6 Q. Okay. Are you even qualified to do
7 that?

8 A. I am not qualified to do that.

9 Q. Okay. Now, do you -- do you have a
10 copy of that questionnaire?

11 A. I do.

12 Q. Have you reviewed that in preparation?

13 A. Uh-huh. I have.

14 Q. If you will -- if you will, look at
15 question -- well, every single question
16 actually. Are you aware that you answered
17 these to a reasonable degree of medical
18 certainty?

19 A. Correct.

20 Q. If you are not a medical expert, how
21 could you answer these to a reasonable degree
22 of medical certainty?

23 A. This -- and I consulted with our
24 psychologist, Dr. Nicholas Lind. Within a
25 reasonable degree of my field of expertise,

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1 which is I'm a licensed marriage and family
2 therapist --

3 Q. Okay. So --

4 A. -- for psychological purposes, yes.

5 Q. Okay. So we should be replacing
6 medical certainty with what?

7 A. (No verbal response.)

8 Q. Do you understand what I'm trying to
9 ask?

10 A. I am, and this is how these questions
11 were presented to me in the past. To a
12 reasonable degree of my area of expertise --

13 Q. Okay.

14 A. -- which is as a licensed marriage and
15 family therapist.

16 Q. I got you. So not to a reasonable
17 degree of medical certainty.

18 A. Correct. As to the degree related to
19 my field of expertise.

20 Q. I got you. Now, I noticed on your
21 Website that there is a -- you guys -- you
22 kind of have separated out the workers' comp I
23 guess folks from practitioners in this
24 practice, from everyone else.

25 A. Yes.

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1 Q. Based on the Website at least.

2 A. Uh-huh.

3 Q. Is that correct?

4 A. There is two -- two therapists that do
5 workers' comp.

6 Q. Okay. And you are not one of those,
7 correct?

8 A. I am not one of those two, correct.

9 Q. Okay. Have you provided any expert
10 opinions for Mr. Truitt before?

11 A. Not that I'm aware of.

12 Q. Okay. Have you done any workers' comp
13 work before this particular one?

14 A. I've had people who -- it became
15 workers' comp. They were -- like Mr. Ashford,
16 he was sent to me as a referral by his doctor,
17 not as a workers' comp claim.

18 Q. Do you know who he was referred to you
19 by?

20 A. His medical doctor. I don't have that
21 in front of me.

22 Q. Okay. Do you -- do you have a copy of
23 that referral in --

24 A. It's -- I have -- in his file there is
25 a blue sheet. It's part of the in-take

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1 process that says who the referring --

2 Q. Can you --

3 A. -- doctor is.

4 Q. Can you retrieve that?

5 A. I can.

6 Q. Is that --

7 A. Yes.

8 Q. Is that something you can get?

9 A. Of course.

10 (A short break transpired.)

11 BY MR. HAIGLER:

12 Q. You provided me with a copy of the new
13 client in-take form.

14 A. Correct. Yes.

15 Q. It looks like --

16 A. Can I -- can I --

17 Q. Sure.

18 A. Do you prefer correct or yes to
19 answers?

20 Q. Yes is fine.

21 A. Yes.

22 Q. And it looks like he paid with his
23 personal insurance for this -- these visits.

24 A. Yes.

25 Q. Is that what I'm understanding?

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1 A. Yes.

2 Q. And the referral was from
3 Mary Grace Medical Group, C. Grace Medical
4 Group?

5 A. Mary Grace Medical Group.

6 Q. Got you.

7 A. Yes.

8 Q. Got you. Got you. Okay. Have you
9 reviewed any of his other medical records?

10 A. No.

11 Q. Were you ever provided a copy of any
12 medical records to review?

13 A. No.

14 Q. Are you aware that in not a single
15 document that I have, that we have submitted
16 at this hearing from an orthopaedic
17 standpoint, did he ever make any complaints of
18 any psychological problems? And that is an
19 18-month period. Were you aware of that?

20 A. I am not aware of that.

21 Q. Okay. Now, when he saw you -- it
22 looks like the first -- first date you saw him
23 was 3-2.

24 A. 3-2-2015, yes.

25 Q. Okay. You saw him again on 3-26 and

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1 then the last one was 4-7.

2 A. Correct.

3 Q. Now, on that 4-7 note you reported
4 that there was some issue with the fact that
5 he -- he told you -- basically it looks like
6 he told you he was denied a second opinion
7 regarding his injury. Is that right?

8 A. Claimant reports he was deposed two
9 weeks ago, reports it was a stressful
10 experience, was denied a second opinion he was
11 seeking regarding his injury.

12 Q. Okay. Is that what your -- is that
13 what he told you?

14 A. That is what I was told.

15 Q. And that is on 4-7?

16 A. Correct.

17 Q. Are you aware he had a second and
18 third opinion on 3-9 and 3-18?

19 MR. TRUITT: Objection.

20 MR. HAIGLER: Based on?

21 MR. TRUITT: Well...

22 MR. HAIGLER: I mean, did he not?

23 MR. TRUITT: Well...

24 MR. HAIGLER: Let me -- I will
25 rephrase the question.

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1 MR. TRUITT: I mean --

2 MR. HAIGLER: How about this, I will
3 rephrase it.

4 BY MR. HAIGLER:

5 Q. Are you aware, Todd, that he saw two
6 new doctors that he had not previously seen
7 regarding his condition March the 9th and
8 March 18th of 2015? Are you aware of that?

9 A. I was not told that by him.

10 Q. Okay. Do you get into the medical
11 aspect of this claim at all? I mean, do you
12 deal with -- I mean, is that of any concern to
13 you necessarily?

14 A. Just from his self-report.

15 Q. Okay. And I'm reading your
16 questionnaire, and it looks like you have
17 given the opinion, based on Question No. 5,
18 that he has reached maximum medical
19 improvement.

20 A. In terms of counseling. No more
21 counseling is needed.

22 Q. Okay. And that is your opinion as of
23 the date of this report?

24 A. Yes.

25 Q. Is that the reason you haven't seen

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1 him any longer?

2 A. Yes.

3 Q. All right. So your opinion is, he had
4 kind of -- he didn't need any more counseling;
5 is that --

6 A. At this time, yes.

7 Q. All right. Does he have anything from
8 a -- from what your expertise is, does he have
9 anything that prohibits him from gainful
10 employment at this time?

11 A. There is no mental health
12 contraindications for him to go back to work
13 or for him to work.

14 Q. Now, are you qualified to give an
15 opinion regarding the causal relationship
16 between his psychological condition or
17 psychiatric condition, if he has any, and his
18 work injury?

19 A. Rephrase that question.

20 Q. Sure. Are you qualified to give a
21 causation opinion regarding the relationship
22 between his accident in October of '13, 2013,
23 and his psychological condition, if any? Is
24 that an opinion you are qualified to give?

25 A. Based on his self-report, it was

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1 consistent with his symptoms being connected
2 with the medical injury, but I'm not qualified
3 to give an opinion about the medical injury
4 specifically.

5 Q. Are you qualified to give a
6 psychological or psychiatric opinion?

7 A. I have -- I have -- I am able to give
8 an opinion based on his self-report of his
9 psychological condition.

10 Q. Okay. Are you able to give an expert
11 opinion as a psychologist or a psychiatrist?

12 A. I'm not a psychologist or
13 psychiatrist. I'm a licensed marriage and
14 family therapist.

15 Q. So is that a no?

16 A. I -- I am -- my license allows me to
17 diagnose and treat mental disorders as
18 described in the DSM, and he has -- he was
19 given the diagnosis adjustment disorder with
20 anxiety and depressive mood, which I believe
21 was connected with his job-related injury --

22 Q. Okay.

23 A. -- so I am qualified to --

24 Q. But he has --

25 A. -- diagnose and treat mental -- mental

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1 illnesses as described in the DSM-IV, or DSM.

2 I'm sorry.

3 Q. Okay. But you are not -- okay. Fair
4 enough. But you were not qualified to conduct
5 any psychological testing to evaluate the --

6 A. I have --

7 Q. Any other --

8 A. -- done no psychological testing, and
9 I'm not trained to do psychological testing.

10 Q. Fair enough. Okay.

11 A. Yes.

12 Q. But the conditions that you are
13 referring to he has reached MMI for and no
14 longer needs counseling for.

15 A. At this time.

16 MR. HAIGLER: Okay. Thank you, sir.
17 Those are all the questions I have.

18 EXAMINATION

19 BY MR. TRUITT:

20 Q. Todd, just maybe one or two.

21 Mr. Haigler was asking you about on the April
22 7, 2015, medical -- or your actual records
23 where it says he was denied a second opinion
24 he was seeking regarding his injury. Do you
25 recall if Mr. Ashford told you that was denied

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1 by the workers' comp carrier a second opinion
2 as opposed to him getting a second opinion on
3 his own through his own health insurance?

4 A. Ask the question one more time.

5 Q. Do you recall in this -- in this note
6 on April 7, 2015, where he says he was denied
7 a second opinion he was seeking regarding his
8 injury, do you recall if Mr. Ashford told you
9 that he was denied a second opinion by the
10 workers' comp carrier as opposed to him
11 getting a second opinion on his own through
12 his own health insurance?

13 A. Based on the way my notes look, it was
14 related to the deposition two weeks prior that
15 he was denied a second opinion.

16 Q. Okay.

17 A. I don't recall.

18 Q. You can't recall if it was from the
19 workers' comp carrier?

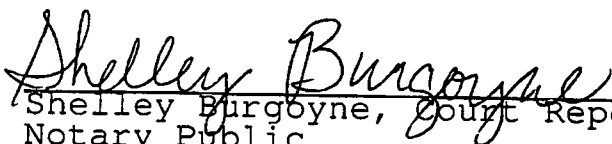
20 A. I -- I can't recall.

21 MR. TRUITT: That is all I have.
22 Thanks.

23 MR. HAIGLER: Thank you, sir.

24 (The deposition concluded at
25 approximately 10:17 a.m.)

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1 CERTIFICATE OF REPORTER
2
34 I, Shelley Burgoyne, Court Reporter
5 and Notary Public for the State of South
6 Carolina at Large, do hereby certify:7 That the foregoing deposition was
8 taken before me on the date and at the time
9 and location stated on Page 1 of this
10 transcript; that the deponent was duly sworn
11 to testify to the truth, the whole truth and
12 nothing but the truth; that the testimony of
13 the deponent and all objections made at the
14 time of the examination were recorded
15 stenographically by me and were thereafter
16 transcribed; that the foregoing deposition as
17 typed is a true, accurate and complete record
18 of the testimony of the deponent and of all
19 objections made at the time of the examination
20 to the best of my ability.
2122 I further certify that I am neither
23 related to nor counsel for any party to the
24 cause pending or interested in the events
25 thereof.26 Witness my hand, I have hereunto
27 affixed my official seal this 3rd day of
28 August, 2015, at Lexington County, South
29 Carolina.
30
31
32
33
34
3536 
37 Shelley Burgoyne, Court Reporter
38 Notary Public.
39 State of South Carolina at Large
40 My Commission expires:
41 June 29, 2020

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 1318928

James Ashford,)
Claimant,)
v.)
Prysmian Power Cables,)
Employer,)
and)
Sentry Insurance Company,)
Carrier/Defendants.)
-----)

COPY

FULL COMMISSION PANEL HEARING

Monday, August 15, 2016
3:02 p.m. - 3:37 p.m.

The full commission panel hearing was held before the South Carolina Workers' Compensation Commission, 1333 Main Street, 5th Floor, Columbia, South Carolina, on the 15th day of August, 2016 before Jill H. Vickers, Court Reporter and Notary Public in and for the State of South Carolina.



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APPEARANCES

COMMISSION PANEL:

Gene McCaskill, Chair
Susan Barden
Scott Beck

David N. Truitt, Esquire

Truitt Law Firm
925 Calhoun Street
Columbia, South Carolina 29201
Attorney for the Claimant

Nicolas L. Haigler, Esquire

Sowell, Gray, Robinson, Stepp & Laffitte, LLC
1310 Gadsden Street
Columbia, South Carolina 29201
Attorney for the Defendants

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CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
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1 COURT REPORTER: Today is August 15, 2016. This is
2 South Carolina Workers' Compensation Case
3 Number 1318928. This is the case of James
4 Ashford, Claimant vs. Prysmian Power Cables,
5 Employer, and Sentry Insurance is the Carrier.
6 The Appellant is the Defendant represented by
7 Nicolas Haigler. The Respondent is represented
8 by David Truitt. Each side is allowed ten
9 minutes for oral argument and three minutes in
10 reply. You are requested to argue the grounds
11 of exception and stay within the record.

12 ARGUMENT BY MR. HAIGLER:

13 MR. HAIGLER: If it please the commission. Nick
14 Haigler here on behalf of Prysmian Cables.
15 This is a case where the claimant was found to
16 be at MMI by the authorized treating physician,
17 Dr. Fulton. The facts before the date of MMI
18 are not really in dispute, so I won't spend a
19 whole lot time dealing with that. This is
20 really just a case of whether this gentleman
21 reached Maximum Medical Improvement and
22 moreover whether he's entitled to a continued
23 TTD benefit. There are really three points
24 here. I think it's very simple. We have MMI,
25 whether this gentleman reached MMI. We have



1 whether this gentleman has any work
2 restrictions. We have the case of whether the
3 claimant met their burden under 42-15-60,
4 which, as you know, says that if you are
5 alleging entitlement to medical benefits after
6 ten weeks, you need to show to a reasonable
7 degree of medical certainty and medical
8 evidence that you're entitled to those
9 benefits, that they will tend to lessen your
10 period of disability. I have produced
11 evidence, hence the reason I got a Form 21
12 hearing, that this gentleman had reached
13 Maximum Medical Improvement pursuant or per the
14 authorized treating physician. He likewise had
15 been released without any work restrictions
16 whatsoever, and there was no evidence
17 indicating this gentleman needed additional
18 medical treatment that would be causally
19 related to the injury and/or would tend to
20 lessen his period of disability to a reasonable
21 degree of medical certainty. There is no
22 evidence in the record anywhere that this guy
23 is not at Maximum Medical Improvement. There
24 is absolutely no evidence. Chip cannot stand
25 up here and tell you there's evidence that he's



1 not at MMI. There's not one doctor -- no
2 doctor has said that he's not a Maximum Medical
3 Improvement, not one. There's also not a
4 single doctor that has given him any permanent
5 work restrictions at all. In fact, the only
6 work restrictions he has right now are zero.
7 So, that, in and of itself, should stop his
8 benefits. He has nothing and hasn't since
9 February of 2015, no restrictions from any
10 doctor keeping him from working full duty. So,
11 he's at MMI per all the doctors -- per the only
12 doctor that's commented on it, excuse me, and
13 he has no medical restrictions. Those facts
14 are not in dispute. There's nothing to the
15 contrary. In addition, there is no evidence
16 that has been presented that there is a need
17 for additional medical treatment stated to a
18 reasonable degree of medical certainty to
19 lessen his period of disability. There's
20 absolutely no evidence in the record anywhere
21 from any physician that says that. I asked the
22 claimant about that during my examination of
23 him at the hearing, and he admitted that there
24 is no evidence that he's not at MMI, there's no
25 evidence that he has work restrictions, and



1 there is no evidence that he needs additional
2 medical treatment under 42-15-60. Those are
3 all concessions my the claimant.

4 **COMMISSIONER BECK:** There is evidence that he needs
5 additional medical treatment.

6 **MR. HAIGLER:** Excuse me. Let me rephrase my --
7 you're right, commissioner. There's no
8 evidence stated to a reasonable degree of
9 medical certainty to meet that statute that
10 entitles him therefore to that treatment.
11 There's no evidence of that.

12 **COMMISSIONER BECK:** Right.

13 **MR. HAIGLER:** Now, to your point, this gentleman
14 could be at MMI, and as you know, still need
15 medical care. That could be the case, but
16 there's no -- according to the evidence we

17 have, there's no evidence to the contrary that
18 he's at MMI, and even if you didn't find him at
19 MMI ---

20 **COMMISSIONER BARDEN:** Isn't there a nerve conduction
21 study that hasn't been reviewed by a
22 specialist? I mean, isn't that something a
23 physician recommended it reviewed by someone
24 and it has not?

25 **MR. HAIGLER:** It has not been reviewed and ...



1 COMMISSIONER BARDEN: Well, couldn't that affect his
2 degree of impairment?

3 MR. HAIGLER: If there's an opinion that says I
4 could, but that's not my burden of proof any
5 longer, but let me address that ---

6 COMMISSIONER BARDEN: But he's undergone the test,
7 and y'all paid for the test, correct?

8 MR. HAIGLER: Correct.

9 COMMISSIONER BARDEN: What is the purpose of a test
10 if you're not -- because I can go for an MRI.
11 Why would I go and pay for an MRI, but I never
12 know what the results are. It's not an
13 exercise in futility.

14 MR. HAIGLER: It's not, commissioner, and I'll tell
15 you why.

16 COMMISSIONER BARDEN: Okay.

17 MR. HAIGLER: Dr. Fulton, before he released this
18 gentleman -- this guy has a history of diabetic
19 neuropathy as before this case. Dr. Fulton
20 asked him -- he was kind of baffled that had
21 not improved as he expected. So, Dr. Fulton
22 asked him on the date he release him at MMI,
23 "Mr. Ashford, I'd for you to tell me about your
24 diabetes". The man has diabetic neuropathy.
25 It's in the report on Pages 54 and 55 of the



1 defendant's APAs, and Mr. Ashford, according to
2 the report, refused to answer the question. He
3 said, "I'm not going to talk about my diabetes
4 with you, Dr. Fulton. That's not relevant to
5 this case." It's very clearly in the record.
6 Interestingly enough -- so, our thinking was,
7 well, let's authorize the EMG to see if
8 Dr. Fulton was correct. Well, if you read the
9 EMG, one of the topics -- and they're all
10 possibilities. None of those things are for
11 certain, but one of the possibilities is
12 diabetic neuropathy, which is not related to
13 this case. So, what's interesting about that,
14 though, is if you read the claimant's brief,
15 they go into a lot of detail about the fact
16 that Dr. Fulton is quote "beholden to the
17 carrier, incompetent, egotistical, a poor
18 physician, only working to get more referrals,
19 was biased based upon his refusal to order a
20 second opinion", really bad things to say about
21 a doctor, when, in fact, what the doctor
22 suspected may actually be the case, so ...

23 **COMMISSIONER BARDEN:** It may be the case, but you
24 would concede that Dr. Fulton is a very
25 conservative physician, is he not? I mean,



1 isn't it within the purview of the commission
2 to look at these physicians, whether they're
3 one extreme or the other, and we all see these
4 extremes in workers' comp, and you're nodding
5 your head affirmatively, so I know you
6 understand that.

7 **MR. HAIGLER:** I understand, but I think this really
8 comes down to whether I met my burden of proof
9 and whether that burden of proof was overcome
10 by any evidence by the claimant. I had Form 21
11 hearing. He's at MMI. There's no evidence to
12 the contrary on that fact that I've seen, none.
13 Even the doctors that the claimant had examine
14 him didn't say this gentleman was not at MMI,
15 and we'd all concede, I think, that you can be
16 at MMI and need all kind of treatment.

17 **COMMISSIONER BARDEN:** Was the Nerve Conduction Study
18 performed after he saw other physicians or
19 prior to that?

20 **MR. HAIGLER:** After, but the second issue is, this
21 gentleman has zero -- I mean, there's no work
22 restrictions. So, even if you find he's not at
23 MMI, even if you find he needs additional
24 medical treatment or some combination thereof,
25 he still has no medical restrictions, zero.



1 Dr. Fulton released him to full duty. He has
2 made no effort to go back to work, and he's not
3 entitled to TTD after -- I mean, he has nothing
4 that -- 42-9-110 is clear on that. You need to
5 be totally disabled from employment. He has no
6 disability from employment. So, he should be
7 working, and even if those other things aren't
8 the case, he still should not be getting TTD
9 right now, and there is literally no evidence
10 to the contrary on that. That's kind of been
11 my trouble with this case the whole time, is I
12 have proven MMI. I have proven that he doesn't
13 need any further treatment, and he has no work
14 restrictions, and the only evidence to the
15 contrary is, "I think he needs more treatment",
16 coming from the claimant's mouth, but there's
17 no evidence of that per the requirements we
18 have in the statute which is 42-15-60 and the
19 caselaw that goes with it. None of those
20 things have been met. There's no physician
21 that's commented on, to a reasonable degree of
22 medical certainty, and that's the standard.
23 You have to show to a reasonable degree of
24 medical certainty that additional treatment is
25 going to lessen his period of disability.



1 That's the requirement. He's not done that.
2 Now, what's interesting is, in the brief that
3 the claimant presented to you guys, it's
4 mentioned that the commissioner has the right
5 -- or the discretion under 42-15-80 to say,
6 "Well, I'm going to send you for treatment".
7 Well, that's not what Commissioner Campbell did
8 in this case. That was not the finding of fact
9 or the conclusion of law that he used. He used
10 42-15-60. Well, if we're going to apply that,
11 then we have to apply it. Either there's
12 medical evidence or there's not, and in this
13 case, there was not. That is not my burden of
14 proof. I do not have to provide the medical
15 evidence to show that he needs additional
16 treatment to a reasonable degree of medical
17 certainty. That's the claimant's burden. That
18 has been met. So, I think he's at MMI. I
19 think he's entitled to a disability award, and
20 I think he's entitled -- his TTD should have
21 been stopped, either because he has no
22 restrictions or because he's reached MMI or
23 really both as of February of 2015, and I'm
24 entitled to a credit all the way back to that
25 date, and unfortunately, I had to wait a decent



1 amount of time for the order which is -- but be
2 that as it may, the facts are still what they
3 are. I mean, they're still what they are, and
4 it really wouldn't change that in any way,
5 shape or form. There is one more point that I
6 think needs to be addressed, and I don't
7 understand it, but we had -- there was an
8 allegation of a psychological overlay in this
9 case. Of course, I filed my 21, and Chip filed
10 a 50. The commissioner -- well, when Chip
11 filed his pre-hearing brief, it clearly says on
12 there "psyche", among some other body parts.
13 Well, think we all know that when I file a Form
14 21, the claimant is allowed to allege any of
15 the body parts he feels -- he doesn't have to
16 file a 50. He can just allege other body parts
17 that he feels -- in a pre-hearing brief, it
18 happens all the time, that he thinks are
19 related, and the commissioner will hear those,
20 will adjudicate whether they're compensable or
21 not. It happens all the time. That happened
22 in this case. Psyche was ready. Not only was
23 psyche alleged, they submitted a report from an
24 expert, which I objected to on numerous
25 grounds. And Commissioner Campbell said on the



1 record, "I'm going to overrule your objection,
2 Mr. Haigler, but I'm going to let you take that
3 expert's deposition".

4 I went and took that expert's deposition,
5 submitted the deposition to the commissioner,
6 and then when I get the order, the order says,
7 "The issue of psyche was not timely or before
8 me". Well, why did I have to go take a
9 deposition? It makes no sense to me.

10 **COMMISSIONER BECK:** Mr. Haigler, let's just assume
11 for argument's sake that we agree with your
12 position regarding Maximum Medical Improvement,
13 how do we fix that issue?

14 **MR. HAIGLER:** Meaning -- I'm sorry ...

15 **COMMISSIONER BECK:** Well, apparently the psyche issue
16 hasn't even been litigated yet.

17 **COMMISSIONER BARDEN:** So, if we send it back, then
18 -- you say you've waited sometime for our
19 order, and your clock's ...

20 **MR. HAIGLER:** I didn't create the issue.

21 **COMMISSIONER BARDEN:** No, but we're asking for ---

22 **COMMISSIONER BECK:** I'm sure you've thought through
23 this.

24 **MR. HAIGLER:** I did. My position at the hearing,
25 and it's still my position, is that he's at MMI



1 for the compensable body part, and that the
2 psyche issue -- well, let me rephrase this. He
3 was at MMI for the psyche issue, if it were
4 compensable, as soon as the expert that used,
5 which was a marriage counselor, said "He's also
6 at MMI for the psyche".

7 **COMMISSIONER BECK:** But that issue wasn't even
8 litigated.

9 **MR. HAIGLER:** It was litigated. That's the
10 interesting thing, commissioner. Chip asked
11 the claimant in the hearing, "Do you want more
12 psychological treatment; do you want the
13 commissioner to order that you get more
14 psychological treatment", or asked the
15 commissioner to adjudicate that issue in the
16 hearing. So, it was before him. It was
17 litigated.

18 **COMMISSIONER BARDEN:** But he wrote that it was not.

19 **MR. HAIGLER:** It wasn't, but he's going to get two
20 bites at that apple now. He submitted his
21 report -- I went and deposed the expert. I
22 have no idea why I would have done that, he
23 would have told me to do that, had it not been
24 before him, and now a year some months later,
25 we're here. I know -- I understand your



1 question. I think what I was -- the position
2 I was taking at that point in time was two
3 things. He was at MMI for the right hand, and
4 that, if the psyche was compensable, which I
5 denied, but he's also at MMI for that. There
6 was no dispute there. The family counselor
7 said that he was at MMI for that. So, he's
8 either going to be at MMI for both, and he's
9 either going to make a permanency award or send
10 this to mediation.

11 **COMMISSIONER BECK:** Did that report come in?

12 **MR. HAIGLER:** It did come in.

13 **COMMISSIONER BARDEN:** And total disability had been
14 pled on the 50, is that correct, so then it
15 would go to mediation?

16 **MR. HAIGLER:** If he found -- I guess. I wanted TTD
17 stopped. That's what I was asking.

18 **COMMISSIONER BARDEN:** Well, the permanent and total
19 disability was pled for the crux of the 21
20 hearing, was it not, or was it? If it was,
21 then it should have gone to mediation before
22 Commissioner Campbell ever heard it.

23 **COMMISSIONER BECK:** No, because they were disputing
24 MMI.

25 **MR. HAIGLER:** Correct. No, it wasn't pled, but what



1 was pled -- I mean, the only issue raised --
2 this has baffled me. The only issue raised on
3 the claimant's pre-hearing brief was, "Is the
4 Claimant entitled to more psychological
5 treatment?" So, I can't understand how
6 someone -- how we could say -- this was argued.
7 We had this case, and the psyche should have
8 been decided. I had to spend money, my
9 client's money to go depose an expert. To
10 re-do all of that is simply -- I mean, that's
11 a whole another issue, but it should have been
12 decided and there should have been have been
13 decided, and there should have been an
14 adjudication of MMI, psych, permanency, one way
15 or the other, so we had that issue finally
16 determined. So, now, down the road, we're
17 here, and we've been paying this gentleman
18 benefits for a long long time, so -- thank you,
19 commissioners.

20 COMMISSIONER MCCASKILL: All right. Mr. Truitt, I'm
21 going to add a couple minutes to your time,
22 because you only get one bite at the apple.

23 ARGUMENT BY MR. TRUITT:

24 MR. TRUITT: Thank you, commissioner. May it please
25 the commission. I'm Chip Truitt here on behalf



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1 of Mr. Ashford, the claimant, in this case.
2 This case is really about a complicated case,
3 although the posture it is now has become
4 complicated. What happened was, Mr. Ashford,
5 way back when, was injured when his hand got
6 crushed in a machine, and when he got his hand
7 crushed in the machine, it was a significant
8 injury where he had to have a surgery by Dr.
9 Fulton with three different procedures done,
10 including breaking his wrist and everything
11 else. He had a perfectly good arm, perfectly
12 good hand, perfectly good wrist until his crush
13 injury in the machine where his hand was there
14 for five or eight minutes. Dr. Fulton did the
15 surgery, but he didn't make a great recovery,
16 and he kept telling Dr. Fulton, "I'm not making
17 a great recovery. I still have the pain going
18 on in my arm and elbow. I'm still having the
19 numbness in my two fingers here." He kept
20 point that out to Dr. Fulton. Well, Dr. Fulton
21 said, "Well, it's surprising you're not making
22 better progress, but that's just the way it
23 is", and Dr. Fulton cut him loose on his last
24 visit and put him at MMI, although, it was
25 interesting, Mr. Ashford had asked for a second



1 opinion at the last visit with Dr. Fulton. He
2 said, "Can I go see Dr. John Walsh to see
3 what's going on with my hand?" Dr. Fulton
4 didn't address it. He didn't say "yes". He
5 didn't say "sure". He didn't say "okay". He
6 just said, "You're at MMI. Here's your rating.
7 Go have a nice day. You have no work
8 restrictions whatsoever." So, at that point,
9 Mr. Ashford, the claimant, who's not getting
10 better, has to go get care on his own. He's
11 not getting any better, so he goes to two
12 doctors. He goes to Dr. Patel who does hand
13 surgeries wrist surgeries, and he goes to
14 Dr. Gabr, who's a physiatrist/pain management
15 specialist, and both of them looked at it and
16 said, "Well, you've got these issues with your
17 wrist and your hand, and we need to get a EMG
18 Nerve Conduction Study", a very reasonable
19 thing, because his numbness hadn't gone away.
20 He never told Dr. Fulton it had gone away, and
21 he had always complained about it, but for
22 whatever reason, Dr. Fulton didn't order that
23 test, and he didn't order a second opinion.
24 Well, he gets an EMG Nerve Conduction Study
25 recommendation, and Mr. Haigler -- I've already

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1 filed -- at some point, I filed a 50 before the
2 21 alleging permanent and total disability and
3 remanded for mediation, and Mr. Haigler and I
4 discussed the case, and I said "He needs to get
5 looked at. He's not any better", and Mr.
6 Haigler was nice enough to say, "Well, send me
7 the doctor's note saying he needs an EMG Nerve
8 Conduction Study, which I did. It was
9 Dr. Patel's note, the orthopaedist, and then
10 they authorized it.

11 **COMMISSIONER BECK:** How do you file a 50 alleging
12 permanent and total disability when you don't
13 even think the claimant's at Maximum Medical
14 Improvement?

15 **MR. TRUITT:** Because in the position he was in --
16 well, Dr. Fulton had said Maximum Medical
17 Improvement, and the position he was in ---

18 **COMMISSIONER BECK:** But you were disputing it,
19 though, right?

20 **MR. TRUITT:** Correct, but I knew they had a record
21 saying MMI.

22 **COMMISSIONER BARDEN:** You were pleading the
23 alternative.

24 **MR. TRUITT:** I pleading knowing that if Mr. Haigler
25 gets ahold of this MMI report -- I know he's



1 not really at MMI, and I know he can't work in
2 the position he is in now, so I felt like I had
3 to allege it, because if I go to a 21 without
4 having alleged it, the whole case is over, and
5 he's not going to get any more care. So, it
6 was an alternative plea to make sure I
7 preserved his right for more medical care.

8 **COMMISSIONER BECK:** Okay. I gotcha.

9 **MR. TRUITT:** So, I did that, and Mr. Haigler was
10 nice enough to say, "Okay, we're going to
11 authorized the EMG Nerve Conduction Study", and
12 I say, "Well, that's reasonable". And so they
13 do it, and we get that report back literally
14 the day that my APAs are due, literally the day
15 they're due. So, I have no time to get with
16 Dr. Gabr or Dr. Patel to say, "What does this
17 mean? What does this show?" We have three
18 significant findings, one of which is the
19 diabetes. The other two are not related to
20 diabetes. It's important to note that Mr.
21 Ashford never had any problems with his hand or
22 wrist before, even though he does have diabetes
23 in his foot, and we concede that, but he never
24 had any hand issues. So, two of the three
25 findings are not diabetes related, and I'm



1 assuming and incorrectly that since we had a
2 positive EMG Nerve Conduction Study that they
3 authorized, that they would go ahead and
4 authorize the follow-up care with Dr. Patel or
5 somebody else that's not Dr. Fulton to see
6 what's going on. So, I'm thinking,
7 realistically, we're not going to have a
8 hearing, and of course, Mr. Haigler says we're
9 going forward with the hearing, which is fine.
10 That's his right to go forward with the
11 hearing. So, I prepare my APAs, get the
12 supplemental APAs with the EMG Nerve Conduction
13 Study to make sure it's in the record for y'all
14 to review and it's in the record. I had to do
15 it, because the deadline was on Saturday, so I
16 had to submit a supplemental on Sunday, but we
17 got that in. It had Dr. Gabr's and Dr. Patel's
18 records in there and both of them recommending
19 the EMG Nerve Conduction Study, so ...

20 **COMMISSIONER BARDEN:** So, you couldn't get with them
21 to ...

22 **MR. TRUITT:** There was no time. There was no time
23 to get with them to get an opinion as to what
24 was going on with him. And when we went to the
25 hearing in front of Commissioner Campbell, my



1 whole point was -- you know, first of all, I
2 didn't want the hearing at all. I said "I've
3 got a 50 mandatory mediation. We need to get
4 this hand looked at", or at least try to
5 mediate the case, because I would have had
6 time, if we had mandatory mediation, to get him
7 looked at and to get an opinion, maybe we could
8 have settled the case last year, but I didn't
9 have the time, because we went forward with the
10 21 hearing. And my point with the 21 hearing
11 was, he has a right to the hearing, and Dr.
12 Fulton clearly says in record he's at MMI, no
13 question, but Mr. Haigler is relying on that
14 being it, that that's all there is to it for
15 the MMI, and I ...

16 **COMMISSIONER BARDEN:** And the EMG had occurred after
17 that.

18 **MR. TRUITT:** Right, it did. And I don't see how --
19 if all it takes is one doctor's opinion saying
20 MMI on the record and that's it -- and my point
21 was not necessarily to attack Dr. Fulton, but
22 any doctor, just one doctor saying --
23 particularly when you have an objective test
24 saying there's still something going on there.
25 It's not just like the I claimant is just



1 saying "I feel bad". We've got an objective
2 test saying there's something going on there
3 that needs to be investigated. If you just
4 have one bad doctor that says MMI -- let's say
5 we have a claimant that's pro se that hasn't
6 had the benefit to go see dr. Patel or Dr. Gabr
7 that says "I'm still hurting", if you have a
8 bad doctor saying "He's at MMI", if that's all
9 you have to show, then y'all have could never
10 ever order more care for a pro se claimant.
11 That claimant would be toast. He'd have no
12 chance to get more care. At least in this
13 case, we have two doctors saying "He needs more
14 care, he needs the EMG Nerve Conduction Study",
15 and got it and -- I don't think -- I can't find
16 in the law or statute or caselaw anywhere which
17 says the burden of proof at a 21 hearing
18 switches to the claimant. I cannot find that.
19 I've looked for it, and Mr. Haigler didn't say
20 it in his brief. It's my understanding, when
21 you're the moving party, you always have the
22 burden of proof, and I couldn't find anything
23 that said ...

24 **COMMISSIONER BECK:** I'm not sure I agree with that.

25 You always have the burden of proof for any



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1 benefits you're seeking. That never -- that
2 doesn't shift back to him unless he raises an
3 affirmative defense of some kind.

4 **MR. TRUITT:** I agree with you, commissioner, on
5 that, but as far as proving MMI, I think the
6 burden of proof at a 21 is always going to be
7 on the ...

8 **COMMISSIONER BECK:** I've got it now. Okay.

9 **MR. TRUITT:** And I couldn't find anything that said
10 otherwise. So, my whole point would be that it
11 can't be that easy to have one physician's
12 opinion that we know later may not be correct
13 because we have a positive EMG Nerve Conduction
14 Study to just declare him at MMI. We've got
15 two other physicians saying "Let's get this
16 done", and they didn't address MMI. I'm just
17 ...

18 **COMMISSIONER BARDEN:** Don't you agree that ordering
19 a diagnostic study necessarily connotes that
20 it's going to be reviewed by a physician for it
21 to have any meaning at all?

22 **MR. TRUITT:** Which is why I was surprised we went
23 forward with the hearing, but it's his right
24 to have the hearing, but that ...

25 **COMMISSIONER BARDEN:** But that's not disputing the



1 ...

2 **MR. TRUITT:** Right, but the fact that they ordered
3 it and were waiting on the results indicated to
4 me that we were going to get follow-up care,
5 because why would you order it if you weren't
6 going to follow up to see what ...

7 **COMMISSIONER BARDEN:** But maybe not follow-up care,
8 but a follow-up review. The follow-up review
9 may say that it's diabetic related.

10 **MR. TRUITT:** It may, and then we would know and we
11 maybe would have resolved the case a year ago,
12 but we just don't have the answer, and it's
13 unfortunate, because my client has been on a
14 running award for a year, and it's unfortunate
15 for them, but he also hasn't been able to get
16 his health insurance carrier to provide any
17 more care for him, so he's sitting at home not
18 getting any more care, and they're paying a
19 check, so nobody is winning. He's not winning,
20 because he's not getting any more care, and
21 they're not winning. So, I think,
22 procedurally, this case kind of got muddled by
23 actually going forward with that hearing. Now,
24 we had to go forward with it, because we
25 couldn't say we can't go forward with it, but



1 I think the -- well, the hearing was only on
2 the 21. The 50 was -- it was mandatory
3 mediation, so any issue -- I raised the issue
4 of psych at the hearing, because I was trying
5 to cover my bases not knowing what Commissioner
6 Campbell was going to do. I don't think -- I
7 think he was correct on that. I think anything
8 that I alleged on the 50 has to be mediated
9 before we get to a hearing pursuant to the
10 regulation. I do not think -- at 21 hearing
11 for a stopped pay, I think the first issue was,
12 has he proved MMI, and he's alleging "I've
13 proved it by the record", and I'm alleging
14 "There's no way it can be that easy. It can't
15 be that simple." If I've got two doctors
16 saying he needs more care, he needs an EMG
17 Nerve Conduction Study, and then I get a test
18 saying it's positive, it can't be that easy.
19 If it is, no claimant would ever have a chance.
20 And that's simply my point. It can't be that
21 easy. And the burden of proof on him is to
22 prove MMI, and Commissioner Campbell just said,
23 "Well, I agree with Mr. Truitt. I think
24 essentially that we have two doctors saying he
25 needed this test, and this test was positive.



1 I can't find him at MMI, because we don't even
2 know what's going on with his wrist and hand
3 now". And the other point is correct,
4 Dr. Fulton said that he has no work
5 restrictions, but -- and this is interesting,
6 because they're asking you to believe Dr.
7 Fulton on MMI, but they don't believe
8 Dr. Fulton as far as themselves, because they
9 ordered the EMG Nerve Conduction Study, even
10 though Dr. Fulton didn't say he needed it, so
11 they kind of contradicted their own doctor.

12 **COMMISSIONER BECK:** Let me ask you this question.
13 If that assessment -- there's nothing to the
14 contrary of him not having any work
15 restrictions. Is that a fair statement?

16 **MR. TRUITT:** That's fair.

17 **COMMISSIONER BECK:** So, why is he still entitled to
18 TTD?

19 **MR. TRUITT:** Well, because I think you have to base
20 it on Dr. Fulton's opinion to come to that
21 conclusion, because he's the only one that did
22 that, and I think you've got two other doctors
23 that say ...

24 **COMMISSIONER BARDEN:** But they didn't address
25 restrictions?



1 MR. TRUITT: They did not.

2 COMMISSIONER BARDEN: So, the only thing we have on
3 restrictions -- now, of course, we have the
4 diagnostic testing as far as more medical
5 proof, but as far as restrictions, we've got
6 one doctor saying no restrictions, and there's
7 no competing opinion.

8 MR. TRUITT: That's right, but that doctor, we
9 already know ...

10 COMMISSIONER BARDEN: But wouldn't it be possible if
11 the test is -- if we agree with you that he
12 should have the test reviewed and then any
13 appropriate treatment, then he could
14 perspectively receive TDD. Is that correct?

15 MR. TRUITT: That's possible, but my concern is,
16 though, if you're relying on Dr. Fulton for the
17 work restrictions ...

18 COMMISSIONER BARDEN: But we're not doctors.

19 MR. TRUITT: I understand that, but if he's wrong
20 about what's going on with his arm and wrist
21 pursuant to the EMG Nerve Conduction Study,
22 which is positive, and if they're contradicting
23 their own doctor about sending him for a test
24 that Dr. Fulton said he didn't need, they're
25 not really believing their own doctor.



1 COMMISSIONER BECK: But the zero restrictions,
2 there's nothing to refute that. One could
3 concur with the others doctors that he still
4 may not be at MMI, but there's nothing to
5 refute ---

6 MR. TRUITT: The claimant -- the claimant testified
7 under oath that he's not capable of doing his
8 job as it was, and based on the doctor's
9 opinion ...

10 COMMISSIONER BARDEN: That job or any job?

11 MR. TRUITT: No, that job. His job was in a
12 factory. He's a supervisor, but he had to use
13 his arms and his hands, and that was one of the
14 reasons he

15 COMMISSIONER BARDEN: So, he could not do that job?
16 Did he say he couldn't do any job or that job?

17 MR. TRUITT: I'd have to review the record on that,
18 but I was specifically asking about that job.
19 I was asking about that job, I know, and he
20 said he could not do it based on the way his
21 hand was bothering him, which is the why he
22 called a lawyer, because he knew that he was
23 getting near the end of his care, and he wasn't
24 better. He wasn't well, so he called a lawyer
25 about -- he was worried about whether he was



1 going to be able to go back to work. So, then,
2 we tried to get him that additional care right
3 away, and Mr. Haigler was nice enough to
4 authorize the EMG Nerve Conduction Study.

5 **COMMISSIONER BARDEN:** But without a doctor reviewing
6 it, what does it mean to go get one?

7 **MR. TRUITT:** That's our problem with the case, Your
8 Honor. Hindsight is 20/20. I think all of us
9 would like to go back in time and just get a
10 doctor to review it, because it may not -- it
11 may be diabetes.

12 **COMMISSIONER BARDEN:** It is what it is.

13 **MR. TRUITT:** Yes, it is what it is. We just don't
14 no what it is. We know he's hurt. We know
15 that his complaints are backed up by the
16 report.

17 **COMMISSIONER BARDEN:** And part of this process is to
18 get to the truth, and we don't know what the
19 truth is.

20 **MR. TRUITT:** That's -- and the claimant does want
21 treatment. I mean, he really does, because
22 he's sitting at home, and the health insurance
23 carrier won't authorize more care, because if
24 I would have had it, I would have gotten it,
25 but we can't get it right now because of this



1 Workers' Comp. thing. So, thank you. I
2 appreciate it. I think we covered everything.
3 Thank you.

4 COMMISSIONER MCCASKILL: Mr. Haigler.

5 ARGUMENT IN REPLY BY MR. HAIGLER:

6 MR. HAIGLER: Quickly, commissioners, I think there's
7 been some -- I think we're getting kind of lost
8 in the minutia of the EMG Nerve Conduction
9 Study. We authorized -- that study happened
10 two weeks before the hearing. MMI had already
11 been four months down the road at that point,
12 so the whole notion that there was no time --
13 he saw a doctor -- and the two doctors that
14 we're talking about ...

15 COMMISSIONER BARDEN: When did the report of the
16 Nerve Conduction Study come out vis-a-vis the
17 date of the hearing?

18 MR. HAIGLER: It was ten days, seven to ten days
19 before the date of the hearing, but that's not
20 what's important, though. Let's go back. He
21 saw Dr. Gabr, who was his doctor, the doctor
22 the claimant saw, and Dr. Patel back in March.
23 We're talking June to March, so there were
24 three months in which he could have had those
25 two doctors address MMI and those issues that



1 needed to be addressed per the statute, per the
2 rules we operate under. That was a three month
3 period that those doctors could have mentioned
4 those things and did not do so, could have
5 mentioned work restrictions.

6 **COMMISSIONER BARDEN:** But he needed the test before
7 they could address those things. Well, aren't
8 they the ones that recommended the test,
9 because they're not going to recommend the test
10 if they're finding MMI, because those things
11 are inconsistent?

12 **MR. HAIGLER:** I guess my question, though, is if he
13 could go to those two doctors, why couldn't he
14 have gone and gotten the test? We were denying
15 the thing. There's a lot of -- why couldn't he
16 have gone and gotten the test himself?

17 **COMMISSIONER BARDEN:** But y'all provided the test.

18 **MR. HAIGLER:** I agree we did, and the test was
19 inconclusive as to the issue at hand, and so
20 ...

21 **COMMISSIONER BARDEN:** And I guess that comes under
22 the category of "No good deed goes unpunished",
23 because y'all provided the test. If you hadn't
24 have provided the test ...

25 **MR. HAIGLER:** I suppose so, but the fact of the



1 matter is, even if we provided it, even if
2 there's something that's related, that still
3 doesn't mean he's not at MMI. It still does
4 not mean it. There's no opinion -- and I don't
5 think it's -- we're talking about burdens. I
6 filed a 21 under the assumption of Dr. Fulton's
7 MMI opinion, and then they go get two contrary
8 or seemingly contrary opinions. It's not my
9 job to go get those doctors to address MMI.
10 That is not my job. Those doctors did not do
11 so. So, when we're talking about the burden,
12 if you're going to go get your own experts,
13 it's your job to get them to address the issues
14 you need them to address. That is not my job.
15 Now, if they say he is or is not at MMI, I may
16 go depose them, but it's not my job to go do
17 that. So, that issue -- there is no other
18 opinion contrary to MMI. In fact, we just had
19 a Court of Appeals case on this issue where
20 there was only one opinion of MMI, and the
21 Court said -- this just came out a couple weeks
22 ago, and the Court said, "Well, there's only
23 one opinion. We're going to go with that."
24 And I think we're missing -- we're kind of
25 getting side-tracked on that issue, but going



1 back to what Commissioner Beck said. We can
2 talk about these other issues. There's nothing
3 that's contrary to the restrictions issue, and
4 that's binding on the issue of TTD. So, I
5 think that's important. I'll leave it at that,
6 commissioners. I appreciate your time today.

7 **COMMISSIONER BARDEN:** So, when do you think TTD
8 should have ended, on the date of MMI?

9 **MR. HAIGLER:** On the date he was released with no
10 restrictions and did not report back to work.

11 **COMMISSIONER BARDEN:** Okay. And what date was that?

12 **MR. HAIGLER:** That date was February 13th of 2015.

13 **COMMISSIONER BECK:** What date was the hearing?

14 **MR. HAIGLER:** June 23rd of '15, and we received the
15 order on June 24th.

16 (Whereupon, the hearing concluded at 3:37 p.m.)
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CERTIFICATE

This is to certify that the hearing consisting of thirty-four (34) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenotype with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on January 9, 2017.


Jill H. Vickers
Certified Court Reporter

Notary Public for South Carolina
My Commission Expires: October 18, 2026



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Emily S. Andrews

From: Emily S. Andrews
Sent: Thursday, July 6, 2017 2:08 PM
To: 'chip@chiptruitlaw.com'
Subject: James A. Ashford v. Prysmian Power Cables (55C098612) 5431/8392
Attachments: OC Motion to Dismiss Cross Appeal (A1054209xA08D7).PDF

Hi Mr. Truitt,

We are in receipt of your Motion to Dismiss Cross Appeal, regarding the above matter. We filed our Initial Brief and Designation of Matter on May 30th. By chance, did you file a response to our brief? I have not seen anything come in and want to make sure I did not miss it.

Thank you,

Emily



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Emily Andrews LEGAL ASSISTANT VCARD

1310 Gadsden Street | Columbia, SC 29201 | 803.231.7807
sowellgray.com

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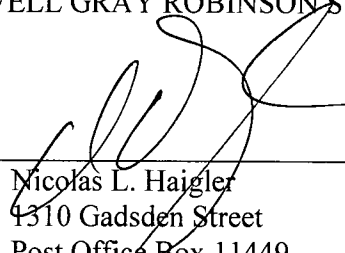
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CERTIFICATE OF COUNSEL

I certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

SOWELL GRAY ROBINSON STEPP & LAFFITTE, L.L.C.



Nicolas L. Haigler
4310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

ATTORNEYS FOR APPELLANTS

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